(37,471)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 774

CHARLES P. BULLARD ET AL., PETITIONERS,

vs.

CITY OF CISCO, TEXAS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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BE IT REMEMBERED, That at a term of the District Court of the United States, in the Fifth Circuit thereof, and in and for the Northern District of Texas, at Abilene, begun and holden at Abilene, Texas, on the 26th day of October, A. D. 1931, and which term is still pending, the Honorable James C. Wilson, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

CHARLES P. BULLARD, ET AL.,

versus No. 1008 At Law.

CITY OF CISCO, TEXAS, ET AL.

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2 In the District Court of the United States for the Northern District of Texas, Abilene Division.

Charles P. Bullard, et al., Plaintiffs,
vs. No. 1008, At Law.
City of Cisco, Texas, Defendant.

To the Honorable James C. Wilson, Judge of said Court:

Now come the Plaintiffs, Charles P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White, and with leave of the Court first had and obtained file this their second amended original petition, and complain of the defendant, City of Cisco, Texas, and for cause of action plaintiffs allege the following:

1.

That the plaintiffs, Charles P. Bullard, John R. Brandon and Robert D. White are each residents and citizens of the State of New York; that the plaintiff Henry E. Poor is a resident and citizen of the State of Ohio. That the defendant City of Cisco, is and at all times mentioned in this petition has been, a municipal corporation organized and existing under the General Laws of the State of Texas, and since July 28, 1919, incorporated and acting under a special charter, having its situs in, and being a citizen of, Eastland County, Texas, which is within the Abilene Division of the District Court of the United States for the Northern District of Texas. The defendant has heretofore been cited and has appeared herein.

That this is a suit between citizens of different states and the matter in controversy herein, exclusive of interest and costs, exceeds the sum of $3,000.00; and further pleading plaintiffs say:

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2.

That on various and sundry dates as follows, the defendant City of Cisco did execute and issue its various and sundry bonds as follows, to-wit:

(a) On, to-wit, March 10, 1920, its bonds in the aggregate sum of $500,000.00, denominated "City of Cisco Waterworks Bonds," bearing date of March 10, 1920, numbered consecutively from 1 to 500, inclusive, in denomination of $1,000.00 each, bearing interest at 6% per annum, payable March 10, 1921, and thereafter semi-annually on September 10 and March 10 in each year, principal payable serially on March 10 from 1923 to 1930, inclusive.

(b) On, to-wit, July 15, 1920, its bonds in the aggregate sum of $100,000.00, denominated "City of

Cisco Paving Fund Bonds, Series 1," bearing date July 15, 1920, numbered consecutively from 1 to 100 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable January and July 15 in each year, principal payable serially on July 15 from 1930 to 1949, inclusive.

(c) On, to-wit, November 24, 1920, its bonds in the aggregate sum of $300,000.00, denominated "City of Cisco Waterworks Extension Funding Bonds, Series 1," bearing date November 24, 1920, numbered consecutively from 1 to 300 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable May and November 24 in each year, principal payable serially on November 24, from 1950 to 1960, inclusive.

(d) On, to-wit, May 10, 1931, its bonds in the aggregate sum of $350,000.00, denominated "City of Cisco Waterworks Extension Funding Bonds," bearing date May 10, 1931, numbered consecutively from 1 to 350 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable May and November 10 in each year, the principal of said bonds payable serially on May 10 from 1941 to 1961, inclusive.

(e) On, to-wit, January 15, 1922, its bonds in the aggregate sum of $500,000.00, denominated "City of Cisco Waterworks Bonds, Series 2," bearing date January 15, 1922, numbered consecutively from 1 to 500, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable January and July 15 in each year, principal payable serially on January 15 from 1933 to 1960, inclusive.

(f) On, to-wit, June 1, 1922, its bonds in the aggregate sum of $100,000.00, denominated "City of

Cisco Funding Bonds, Series of 1922," bearing date June 1, 1922, numbered consecutively from 1 to 100 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable June and December 1, in each year, principal payable serially on June 1 from 1943 to 1962, inclusive.

(g) On, to-wit, December 1, 1922, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Waterworks Funding Bonds, Series 1922," bearing date December 1, 1922, numbered consecutively from 1 to 200, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable January and July 15, in each year, principal payable serially on January 15 from 1943 to 1962, inclusive.

(h) On, to-wit, April 20, 1923, its bonds in the aggregate sum of $350,000.00, denominated "City of Cisco Funding Bonds, Series 1 of 1923," bearing date April 20, 1923, numbered consecutively from 1 to 300, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable April and October in each year, principal payable serially on April 20 from 1943 to 1962, inclusive.

(i) On, to-wit, August 20, 1923, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Waterworks Funding Bonds, Series 1923," bearing date August 20, 1923, numbered consecutively from 1 to 200 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable 20th day of February and August in each year, principal payable on February 20th from 1944 to 1963, inclusive.

(j) On, to-wit, February 25, 1924, its bonds in the aggregate sum of $200,000.00, denominated "City of

Cisco Funding Bonds, Series 1924," bearing date of February 25, 1924, numbered consecutively from 1 to 200 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable 25th day of February and August in each year, principal payable serially on February 25th from 1949 to 1964, inclusive.

(k) On, to-wit, August 5, 1924, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Funding Bonds, Series 2 of 1924," bearing date August 5, 1924, numbered consecutively from 1 to 200 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable February and August 5 in each year, principal payable serially on February 5th from 1945 to 1964, inclusive.

(l) On, to-wit, December 20, 1924, its bonds in the aggregate sum of $175,000.00, denominated "City of Cisco Funding Bonds," bearing date December 20, 1924, numbered consecutively from 1 to 175, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable June and December 20, in each year, principal payable serially on December 20 from 1945 to 1964, inclusive.

(m) On, to-wit, May 10, 1925, its bonds in the aggregate sum of $334,000.00, denominated "City of Cisco Funding Bonds, Series 1925," bearing date May 10, 1925, numbered consecutively from 1 to 334, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable May and November 10 in each year, principal payable serially on May 10 from 1931 to 1965, inclusive.

(n) On, to-wit, August 1, 1925, its bonds in the aggregate sum of $100,000.00, denominated "City of Cisco Funding Bonds, Series 2 of 1925," bearing date

August 1, 1925, numbered consecutively from 1 to 100 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable February and August 1 in each year, principal payable serially on August 1 from 1946 to 1965, inclusive.

(o) On, to-wit, April 1, 1926, its bonds in the aggregate sum of $165,000.00, denominated "City of Cisco Funding Bonds, Series 1926," bearing date April 1, 1926, numbered consecutively from 1 to 165, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable April and October 1 in each year, principal payable serially on April 1 from 1937 to 1956, inclusive.

(p) On, to-wit, September 10, 1926, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Funding Bonds, Series 2 of 1926," bearing date of September 10, 1926, numbered consecutively from 1 to 200, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable March 10 and September 10 in each year, principal payable serially on September 10 from 1947 to 1966, inclusive.

(q) On, to-wit, May 2, 1927, its bonds in the aggregate sum of $225,000.00, denominated "City of Cisco Waterworks Refunding Bonds, Series 1927," bearing date May 2, 1927, numbered consecutively from 1 to 225, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 5¾% per annum, payable May and November 2 in each year, principal payable serially on May 2 from 1943 to 1967, inclusive.

(r) On, to-wit, March 10, 1928, its bonds in the aggregate sum of $325,000.00, denominated "City of Cisco Refunding Bonds, Series of 1928," bearing date March 10, 1928, numbered consecutively from 1 to

325 inclusive; in denomination of $1,000.00 each, bearing interest at 5½% per annum, payable March and September 10 in each year, principal payable serially on March 10 from 1939 to 1968, inclusive.

(s) On, to-wit, November 15, 1928, its bonds in the aggregate sum of $226,000.00, denominated "City of Cisco Refunding Bonds, Series 2 of 1928," bearing date November 15, 1928, numbered consecutively from 1 to 226, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 5½% per annum, payable May and November 15 in each year, principal payable serially on November 15 from 1944 to 1953, inclusive.

(t) On, to-wit, February 15, 1921, its bonds aggregating $60,000.00, denominated "City of Cisco Sanitarium and Park Bonds," bearing date February 15, 1921, bearing interest at the rate of 5% per annum, payable February and August 15, in each year, in denomination of $1,000.00 each, and being numbered consecutively from 1 to 60, inclusive.

(u) On, to-wit, May 10, 1902, its bonds denominated "City of Cisco Waterworks Bonds," bearing date May 10, 1902, in denomination of $1,000.00 each, and bearing interest at the rate of 5% per annum.

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3.

That at the time of the execution and issuance of the various and sundry bonds aforesaid, coupons were executed and issued by said City to evidence and represent the interest payments on said respective bonds as therein provided. That each and every of said principal bonds, and each and every of said interest coupons, were in form and in fact negotiable instruments, due and payable to bearer. That each and every of said principal bonds, and each and every of

said interest coupons, were duly executed by the Mayor, City Secretary and Treasurer of said City, being thereunto duly authorized in law, by the Constitution of the State of Texas, and by the terms of the Charter of said City. That prior to the sale by said City of any of said principal bonds or interest coupons thereon, same were duly registered with the Comptroller of Public Accounts of the State of Texas, and approved as valid by the Attorney General of the State of Texas, and his certificate issued to that effect. That at the time of the authorization, and prior to the issuance or sale of said bonds or interest coupons thereon, the City Commission of said City, as authorized and required by law and the Constitution of the State of Texas, did levy a continuing, direct, annual ad valorem tax on all taxable property in said city, sufficient to pay the interest on said bonds, and to create a sinking fund sufficient to redeem the principal of said bonds, as same should mature.

That upon the issuance of the aforesaid bonds and interest coupons, after the registration and approval thereof as aforesaid, and prior to the respective maturities thereof, all of said bonds, with the interest coupons thereto, were sold by said City for a consideration, in each instance such as was required by law, and the consideration, in cash, duly received therefor by said City and the proper officials thereof.

9. That but a small portion of the aforesaid bonds have been retired or paid off, there remaining outstanding at this time of said bonds an aggregate of $4,600,000.00, held and owned by these plaintiffs and sundry other persons to these plaintiffs unknown.

Plaintiffs are the owners of, and hold title to various and sundry of said bonds and interest coupons thereon, including the following.

(a) Of the issue of March 10th, 1920, one hundred five (105) bonds aggregating $105,000.00, and past due interest coupons on bonds of said issue aggregating $15,720.00, two thousand dollars ($2,000.00) of the principal of said bonds being past due, having matured on March 10th, 1930, and said interest coupons thereon having matured $390.00 thereof on March 10, 1929, $2,970.00 thereof on September 10th, 1929, and $3,090.00 thereof on each of the dates March 10, 1930, September 10, 1930, March 10, 1931, and September 10, 1931.

(b) Of the issue of July 15, 1920, thirty-six (36) bonds aggregating $36,000.00, and past due interest coupons on bonds of said issue aggregating $4,650.00, $10,000.00 of the principal of said bonds being past due, having matured $5,000.00 thereof on July 15, 1930, and the remaining $5,000.00 thereof on July 15, 1931, and said interest coupons having matured $690.00 thereof on July 15, 1929, $1,050.00 on each of the dates of January 15th and July 15th, 1930, and $930.00 on each of the dates of January 15th and July 15th, 1931.

(c) Of the issue of November 24th, 1920, sixty-six (66) bonds aggregating $66,000.00, and past due interest coupons thereon aggregating $7,920.00, $180.00 thereof having matured on May 24, 1929, $1,800.00 thereof having matured on November 24th, 1929, and $1,980.00 having matured on each of the dates of May 24th and November 24th, 1930, and May 24th, 1931.

10 (d) Of the issue of May 10th, 1921, two hundred forty-three (243) bonds aggregating $243,000.00, and past due interest coupons thereon aggregating $30,900.00, $2,550.00 thereof having matured on May 10th, 1929, $6,480.00 thereof on Novem-

ber 10th, 1929, and $7,290.00 having matured on each of the dates of May 10th, 1930, November 10th, 1930, and May 10th, 1931.

(e) Of the issue of January 15th, 1922, two hundred sixty-eight (268) bonds aggregating $268,000.00, and past due interest coupons thereon aggregating $39,450.00, $90.00 thereof having matured on January 15, 1929, $7,500.00 thereof having matured on July 15th, 1929, $7,830.00 thereof having matured on January 15th, 1930, and $8,010.00 having matured on each of the dates of July 15th, 1930, January 15th, 1931, and July 15th, 1931.

(f) Of the issue of June 1, 1922, forty-four (44) bonds aggregating $44,000.00, and past due interest coupons aggregating $6,300.00, $1,020.00 thereof having matured on June 1, 1929, and $1,320.00 having matured thereon on each of the dates of December 1, 1929, June 1, 1930, December 1, 1930, and June 1, 1931.

(g) Of the issue of December 1st, 1922, eighty-eight (88) bonds aggregating $88,000.00, and past due interest coupons on bonds of said issue aggregating $13,050.00, $150.00 thereof having matured on January 15th, 1929, $2,340.00 thereof having matured on July 15, 1929, and $2,640.00 having matured thereon on each of the dates of January 15th and July 15th, 1930, and January 15th and July 15th, 1931.

(h) Of the issue of April 20th, 1923, one hundred thirty-two (132) bonds aggregating $132,000.00, and past due interest coupons on bonds of said issue aggregating $16,230.00, $1,050.00 thereof having matured on April 20th, 1929, $3,660.00 thereof having matured on October 20th, 1929, and $3,840.00 having matured thereon on each of the dates of April 20th and October 20th, 1930, and April 20th, 1931.

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(i) Of the issue of August 20, 1923, one hundred three (103) bonds aggregating $103,000.00, and past due interest coupons thereon aggregating $15,180.00, $60.00 thereof having matured on February 20th, 1929, $2,760.00 thereof having matured on August 20th, 1929, and $3,090.00 having matured thereon on each of the dates of February 20th and August 20th, 1930, and February 20th and August 20th, 1931.

(j) Of the issue of February 25th, 1924, one hundred eighteen (118) bonds aggregating $118,000.00, and past due interest coupons thereon aggregating $17,610.00, $3,450.00 thereof having matured on August 25th, 1929, and $3,540.00 having matured thereon on each of the dates of February 25th and August 25th, 1930, and February 25th and August 25th, 1931.

(k) Of the issue of August 5th, 1924, one hundred sixty-eight (168) bonds aggregating $168,000.00, and past due interest coupons on bonds of said issue aggregating $24,990.00, $90.00 thereof having matured on February 5th, 1929, $4,740.00 thereof having matured on August 5th, 1929, and $5,040.00 having matured thereon on February 5th and August 5th, 1930, and February 5th and August 5th, 1931.

(l) Of the issue of December 20th, 1924, eleven (11) bonds aggregating $11,00.000, and past due interest coupons on bonds of said issue aggregating $1,650.00, $330.00 having matured thereon on each of the dates of June 20th and December 20th, 1929, June 20th and December 20th, 1930, and June 20th, 1931.

12 (m) Of the issue of May 10th, 1925, one hundred (100) bonds aggregating $100,000.00, and past due interest coupons thereon aggregating $12,480.00, $510.00 thereon having matured on May 10,

1929, $2,970.00 thereof having matured on November 10th, 1929, and $3,000.00 having matured thereon on each of the dates of May 10th and November 10th, 1930, and May 10th, 1931.

(n) Of the issue of August 1, 1925, seventy-two (72) bonds aggregating $72,000.00, and past due interest coupons thereon aggregating $10,740.00, $30.00 thereof having matured on February 1, 1929, $2,070.00 thereof having matured on August 1, 1929, and $2,-160.00 having matured thereon on each of the dates of February 1 and August 1, 1930, and February 1 and August 1, 1931.

(o) Of the issue of April 1st, 1926, one hundred thirty-seven (137) bonds aggregating $137,000.00, and past due interest coupons thereon aggregating $21,-270.00, $180.00 having matured thereon on each of the dates October 1, 1927, and April 1, and October 1st, 1928, $390.00 thereof having matured on April 1, 1929, $3,900.00 thereof having matured on October 1, 1929, and $4,110.00 having matured thereon on each of the dates of April 1st and October 1st, 1930, and April 1st and October 1st, 1931.

(p) Of the issue of September 10th, 1926, one hundred nine (109) bonds aggregating $109,000.00, and past due interest coupons thereon aggregating $15,-870.00, $3,000.00 thereof having matured on September 10th, 1929, $3,150.00 thereof having matured on March 10th, 1930, and $3,240.00 having matured thereon on each of the dates of September 10th, 1930, and March 10th and September 10th, 1931.

(q) Of the issue of May 2nd, 1927, ninety-eight (98) bonds aggregating $98,000.00, and past due interest coupons thereon aggregating $11,730.00 $143.75 thereof having matured on November 2, 1928, $1,-

581.25 thereof having matured on May 2nd, 1929, $2,415.00 thereof having matured on November 2nd, 1929, and $2,530.00 having matured thereon
13. on each of the dates of May 2, 1930, November 2, 1930, and May 2, 1931.

(r) Of the issue of March 10th, 1928, one hundred eighteen (118) bonds aggregating $118,000.00, and past due interest coupons thereon aggregating $15,895.00, $2,970.00 thereof having matured on September 10th, 1929, $3,190.00 thereof having matured on March 10th, 1930, and $3,245.00 having matured thereon on each of the dates of September 10th, 1930, March 10th, 1931, and September 10th, 1931.

(s) Of the issue of November 15th, 1928, seventy-four (74) bonds aggregating $74,000.00, and past due interest coupons on bonds of said issue aggregating $8,965.00, $2,860.00 thereof having matured on November 15th, 1929, and $2,035.00 having matured thereon on each of the dates of May 15th and November 15th, 1930, and May 15th, 1931.

(t) Of the issue of February 15th, 1921, fifteen (15) bonds aggregating $15,000.00, and past due interest coupons on bonds of said issue aggregating $1,675.00, two thousand dollars ($2,000.00) of the principal of said bonds being past due, having matured on February 15th, 1931, and said interest coupons thereon having matured $225.00 thereof on August 15th, 1929, $375.00 thereof on February 15th, 1930, $375.00 thereof on August 15th, 1930, $375.00 thereof on February 15th, 1931, and $325.00 thereof on August 15th, 1931.

(u) Of the issue of May 10th, 1902, ten (10) bonds aggregating $10,000.00, and past due interest

coupons thereon aggregating $1,000.00, $250.00 having matured thereon on each of the dates of January 1, 1930, July 1, 1930, January 1, 1931, and July 1, 1931.

In addition to the bonds and matured and past due coupons thereon owned and held by the plaintiffs as hereinabove set forth, these plaintiffs own and hold coupons of the following description which were heretofore, in due course, for a valuable consideration, duly assigned and transferred to them:

14 (a) Of the issue of March 10, 1920, past due interest coupons aggregating $6,870.00.

(b) Of the issue of July 15, 1920, past due interest coupons aggregating $60.00.

(c) Of the issue of November 24, 1920, past due interest coupons aggregating $2,340.00.

(d) Of the issue of May 10th, 1921, past due interest coupons aggregating $1,200.00.

(e) Of the issue of January 15th, 1922, past due interest coupons aggregating $5,430.00.

(f) Of the issue of June 1, 1922, past due interest coupons aggregating $7,200.00.

(g) Of the issue of December 1, 1922, past due interest coupons aggregating $2,910.00.

(h) Of the issue of April 20th, 1923, past due interest coupons aggregating $2,400.00.

(i) Of the issue of February 25, 1924, past due interest coupons aggregating $1,500.00.

(j) Of the issue of August 5th, 1924, past due interest coupons aggregating $30.00.

(k) Of the issue of December 20, 1924, past due interest coupons aggregating $23,220.00.

(l) Of the issue of May 10th, 1925, past due interest coupons aggregating $4,680.00.

(m) Of the issue of November 15th, 1928, past due interest coupons aggregating $4,647.50.

(n) Of the issue of February 15, 1921, past due interest coupons aggregating $25.00.

15 That is to say, plaintiffs hold the title to bonds of said issues as aforesaid in an amount aggregating $2,115,000.00, of which $14,000.00 is past due and unpaid, and title to interest coupons on said bonds in an amount aggregating $335,787.50, all of which are past due and unpaid, notwithstanding frequent demand has been made of the defendant City for the payment of said past due principal and bonds and all of said past due coupons.

That plaintiffs, or those whose title they have, acquired said bonds and interest coupons in due course and for value, prior to the maturities thereof.

That besides the aforesaid defaulted bonds and interest coupons owned by these plaintiffs, there are various and sundry other interest coupons on said bond issues, and some principal bonds, owned by sundry other persons than these plaintiffs which likewise are in default and unpaid, the amount of which these plaintiffs are unable to state.

Wherefore, plaintiffs pray that they have judgment against the defendant City for the amount of all past

due bonds and interest coupons held and owned by the plaintiffs as aforesaid, together with interest on such bonds, and interest coupons from the dates of their respective maturities as provided therein, and in all respects establishing the status of said bonds and bond issues and the validity of same as valid outstanding obligations against said City, and that plaintiffs be awarded such other relief, general or special, to which they may appear entitled, and they pray for costs of suit.

CALDWELL & RAYMOND,
McBRIDE, O'DONNELL &
HAMILTON,
Attorneys for Defendants.

Filed November 6th, 1931.

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16 (Title Omitted.)

Now comes the defendants and file this their answer to plaintiffs' first amended original petition filed in this cause, and say:

1st. The defendants except to plaintiffs' first amended original petition and say that the allegations therein made and contained do not show that this Court has jurisdiction of this cause, because it is not shown that plaintiffs are joint owners and holders of the bonds and coupons sued upon, nor that any one of them or either of them, is the owner and holder of a sufficient amount thereof to confer jurisdiction upon this Court.

2nd. Defendants except to said amended petition because it shows on its face that there is a misjoinder of causes of action, for this: It seeks legal relief in so

far as it seeks for judgment on the bonds and coupons sued upon, and seeks equitable relief in so far as it is sought to have the validity of the bonds and coupons established by a decree of this Court.

Further answering herein, defendants say:

1st. These defendants would further represent and show unto the Court that they have reason to believe, and do believe, that plaintiffs herein are not the true and unconditional owners and holders of the bonds sued on in this cause, in that the Liberty National Bank and Trust Company of New York, is
17 the owner and holder of bonds aggregating two hundred thousand dollars, in trust, to secure the payment of certain indebtedness owing by plaintiffs herein to the said Liberty National Bank and Trust Company, and the Liberty National Bank and ~~Trust~~ Company, by virtue of being the owner and holder of said bonds, is a necessary party to this suit, and should be made a party to this suit in order that all rights may be adjudicated and the rights of all parties to this suit fully protected.

2nd. This Court is without jurisdiction to hear and to determine the cause of action sued upon here, because plaintiffs are not the owners and holders of the bonds sued upon, or any of them. In this connection, defendants respectfully represent and show unto the Court that plaintiffs are not the owners of the bonds sued upon, or any of them; that they paid no valid consideration therefor, but that the bonds and coupons sued upon were delivered to, and are held by, the plaintiffs merely and solely for the purpose of collection, the plaintiffs having no beneficial interest therein whatever, and that the legal title and beneficial ownership is in others whose names are not disclosed and who are not parties plaintiff in this cause,

all of which will appear and be made manifest by the contract or agreement by and under which plaintiffs hold said bonds and coupons, a copy of which is hereto attached, marked Exhibit "A," made a part hereof, and reference thereunto made for the tenor, terms and effect thereof.

3rd. These defendants further state that they are informed and believe, and being so informed and so believing, allege the facts to be, that no one of the holders of bonds of interest coupons that are now due hold coupons or bonds in an amount sufficient to give this Court jurisdiction, or in the event that any one or more of the true owners and holders of said bonds and coupons that are now due, hold coupons or bonds in an amount sufficient to give this Court jurisdiction, then numerous owners and holders of bonds
18 do not have or hold an amount sufficient to give this Court jurisdiction of their claims. These defendants are not fully advised as to the names and residences of the holders and true owners of said bonds, or the amount of bonds and interest coupons held by any or all of them, but state that the plaintiffs have full information with reference to the names and places of residence of the true holders of said bonds and the amount of bonds and interest coupons now due, held by each of the true owners, and in order that all parties may be fully protected in these matters, and in order that this Court may fully determine whether or not it has jurisdiction, these defendants pray that plaintiffs be required to answer under oath the names and residences of the true holders and owners of said bonds, who have delivered said bonds to plaintiffs for collection, pursuant to the trust agreement as shown by copy attached hereto, and the amount of the bonds and coupons past due now held by each.

4th. Defendants deny all and singular the material allegations made and contained in said petition, and demand strict proof thereof.

5th. Further answering herein, defendants say that plaintiffs ought not to have and recover anything by their suit herein, in so far as they seek to recover judgment on bonds and coupons described in subdivision 1-s of Paragraph 3 of their said petition, because prior to the issuance of any of said bonds and coupons the defendant City of Cisco had exhausted its power to incur indebtedness, and that at the time of the issuance of the bonds and coupons herein referred to, the defendant city had outstanding and unpaid, bonds, warrants and evidence of indebtedness in excess of the amount on which a tax of $2.50 on one hundred dollars of the assessed valuation of
19 taxable property within the corporate limits, if levied and collected, would pay the interest and provide a sinking fund therefor as required by the Constitution and statutes of Texas; and the defendants are informed, have reason to believe, and do believe, and so charge the fact to be, that the plaintiffs are not the owners of any of the bonds and coupons in due course, and that they paid no valuable consideration for them, or any of them, all of which will appear and be made manifest by reference to Exhibit "A", hereto attached and made a part hereof, and that by reason of the premises, the bonds and coupons in this paragraph referred to are void in the hands of plaintiffs.

6th. Further answering herein defendants say that plaintiffs ought not to have and recover anything by reason of their suit herein because the City of Cisco did not legally issue said bonds but said bonds were issued by virtue of some kind or character of con-

spiracy, for needs that did not in fact exist, for purposes other than that specified in the bonds, and ordinances, and by virtue of a preconceived plan whereby said bonds were issued for purposes other than that provided for in the ordinances and resolutions, and the defendants herein verily believe; and so believing, allege the fact to be, that the City of Cisco did not receive value for said bonds as is contemplated by law and as is alleged by plaintiffs herein, and did not in fact receive anything of value for a large part of said bonds, and by virtue of the fact that the plaintiffs herein are not holders in due course for a valuable consideration, plaintiffs ought not to have and recover anything by reason of the facts plead by them, and which will be shown on the trial of this cause.

7th. It appearing from the allegations made in plaintiffs' petition that there are a large amount of bonds issued by the defendant city still outstanding, and which are not sued upon in this cause, and the owners and holders of which are not made parties, defendants pray that in the event judgment should be rendered herein in favor of the plaintiffs, on the bonds sued upon, that said judgment provide that all moneys and funds recovered by virtue of such judgment should be adjudged and decreed to be pro-rated among all the bondholders of the defendant city in the proportion that the bonds held by each of them bear to the moneys and funds collected.

BUTTS & WRIGHT,
Attorneys for Defendants.

Before me, the undersigned notary public, on this day personally appeared J. T. Berry, who being by me

first duly sworn, deposes and says on his oath that he is one of the defendants in the above numbered and entitled cause, that he has read the foregoing answer, and is familiar with the allegations of fact therein made, that the facts therein alleged as being true, are, within his knowledge, true, and he believes those facts alleged on information and belief to be true.

J. T. BERRY.

Subscribed and sworn to before me this 9th day of November, 1931.

F. D. WRIGHT,
Notary Public, Eastland County, Texas.

(Seal)

21 City of Cisco, Texas—Bonds.

Deposit Agreement.

Dated January 3, 1930.

Bondholders' Protective Committee: Charles P. Bullard, Chairman; John R. Brandon, Henry E. Poor, Robert D. White.

Counsel, Caldwell & Raymond, 115 Broadway, New York, N. Y.

Secretary, Horace H. Sears, 120 Broadway, New York, N. Y.

Depository: Liberty National Bank & Trust Company, 50 Broadway, New York, N. Y.

"An agreement, made and executed as of the third day of January, A. D. 1930, between John R. Brandon, Charges P. Bullard, Robert D. White and Henry E. Poor and such other persons, if any, as may hereafter be joined with them as members of the committee (hereinafter sometime called the "Committee"), parties of the first part, and such holders of bonds of the City of Cisco, Texas, and/or coupons for interest thereon, as may become parties to this agreement in the manner herein provided (herein sometimes called "Depositors"), parties of the second part,

"Whereas, said City of Cisco has failed to pay certain interest and principal payments due during the year 1929 on its bonds; and

"Whereas, it is desirable that the holders of the bonds, and coupons should unite and organize for the protection of their interests which can be accomplished most effectively and with the least expense by the appointment of said bondholders' committee with full power and authority in the premises; and

"Whereas, the Committee has consented to act for and on behalf of such holders of bonds and coupons as shall become parties hereto;

"Now, therefore, in consideration of the premises and of the advantages and benefits which
22 which may accrue to them, respectively, from union of interests and concert of action and for other good and valuable considerations, it is agreed between the parties hereto, each of the depositors agreeing for himself, and not for another, as follows:

"First: The Committee above named is hereby constituted and appointed a Bondholders' Committee to exercise the powers and perform the duties herein set forth, and incident thereto;

"Second: Liberty National Bank and Trust Company in New York City is hereby designated as depositary of the Committee under the terms of this agreement, with power to appoint with the approval of the Committee any incorporated Bank or Trust Company having its place of business anywhere in the United States outside of the City of New York as a sub-depositary, and said Liberty National Bank and Trust Company and any sub-depositaries so appointed by it are hereinafter referred to as "depositaries."

"Third: Holders of the following described bonds of the City of Cisco, Texas, to-wit:

"5% Water works bonds dated May 10, 1902, amount outstanding, per city's debt statement of September 10, 1926	$ 12,000.00
"5% Water works bonds dated November 8, 1907, amount outstanding, per city's debt statement of September 10, 1926	$ 9,000.00
"6% Water works bonds dated March 10, 1920, original amount	$500,000.00
"6% Paving bonds, Series 1, dated July 15, 1920, original amount	$100,000.00
"6% Water works extension funding bonds, Series 1, dated November 24, 1920, amount outstanding per city's debt statement of September 10, 1926	$300,000.
"5% Sanitarium and Park bonds, dated February 15, 1921, original amount	60,000.
"6% Water works extension funding bonds, Series 2, dated May 10, 1921, original amount	350,000.
"6% Water works bonds, Series 2, dated January 15, 1922, original amount	500,000.

"6% Water works funding bonds, Series 1922, dated December 1, 1922, original amount ..... 200,000.
"6% Funding bonds, Series 1 of 1923, dated April 20, 1923, original amount ..... 350,000.
"6% Water works funding bonds, Series 1923, dated August 20, 1923, original amount ..... 200,000.
"6% Funding Bonds, Series 1924, dated February 25, 1924, original amount.. 200,000.
"6% Funding bonds, Series 2 of 1924, dated August 5, 1924, original amount.... 200,000.
"6% Funding bonds, dated December 20, 1924, original amount .....$175,000.
"6% Funding bonds, Series 1925, dated May 10, 1925, amount outstanding per city's debt statement of September 10, 1926 ..... 334,000.
"6% Funding bonds, Series 2 of 1925, dated August 1, 1925, original amount 100,000.
"6% Funding bonds, Series 2 of 1925, dated August 1, 1925, original amount ..... 165,000.
"6% Funding bonds, Series 2, 1926, dated September 10, 1926, original amount. 200,000.
"5½% Funding Bonds, Series 2 of 1928, dated November 15, 1928, original amount ..... 226,000.

"With all unmatured interest coupons, and/or matured interest coupons from any of said bonds shall become parties to this agreement by depositing within such period as the Committee may from
24 time to time limit, under the terms of this agreement with one of the Depositaries provided for in the preceding article their bonds and/or coupons. In respect of registered bonds the depositors of such bonds shall deposit them with such in-

dorsements, transfers, assignments, proxies, powers of attorney or other instruments as may be required by the Committee or its depositary receiving such bond, in order to transfer or assign to the Committee the complete and absolute title to the bonds. The Committee may, in its discretion, accept deposits of other bonds and/or coupons of the City of Cisco, if there be such, as evidence of debt of said City other than bonds.

"The Committee may limit or extend the time under which deposits may be made under this agreement, and may impose penalties in respect to late deposits received, and either generally or in special instances, may, in its discretion, after the time limit has expired, accept deposits.

"Every person who shall deposit bonds and/or coupons as herein set forth shall be held to have assented to this agreement and shall be as fully bound by all of the provisions hereof as if he had subscribed and executed this agreement.

"Nothing herein shall be construed to give any rights of any kind to any bondholder of said city or to any person who shall not, as herein provided, become a party to this agreement within the time fixed by the Committee.

"Fourth: Bonds and coupons deposited hereunder shall be held and disposed of by the Committee and/or its depositaries subject to the sole order of the Committee.

"No depositary shall be liable for any act or omission or anything done, or permitted to be done by the depositary, at the request or direction of the Com-

mittee or the Chairman of the Committee, nor shall any depositary be liable for anything whatsoever except its own wilful misconduct.

"Fifth: Neither the Committee, as a Committee, nor any of its members, shall be personally or individually liable for the acts or omissions of any agent, attorney, or employe, nor shall the Committee nor any member of the Committee be liable for any act or omission of any other member, nor shall any member of the Committee be liable for anything but his own wilful misconduct.

"Sixth: Each depositor of bond and/or coupon shall receive under and subject to the terms and conditions of this agreement a certificate of deposit signed by the Depositary or agency receiving the same in such form as shall be prescribed by the Committee, and transferable only upon the books of the depositary issuing such certificate. The transferee of any such certificate of deposit duly indorsed by the depositor and properly witnessed shall, upon surrender of the same to the Depositary issuing such certificate, receive a new Certificate of deposit for the same amount of bonds and/or coupons in the name of such transferee or his nominee, who shall thereafter be deemed a depositor and shall thereafter be entitled to the same rights and privileges and subject in every way to this agreement as fully as the original depositor. The registered holder for the time being of any certificate shall be deemed for all purposes to be the absolute owner thereof and the bonds and/or coupons therein referred to, and neither the depositor nor the Committee, shall be affected by any notice to the contrary.

Neither the issue of any certificate of deposit nor the acceptance thereof by any transferee, shall con-

stitute any representation by the Depositary, or by the Committee, as to the title of the depositor to the bonds described in such certificate of deposit. The post office address of each depositor to be furnished by the depositor at the time of making a deposit to be registered in the books of the depositary, with which his bonds are deposited, and all notices or communications sent by the Committee, its secretary
26 or any depositary to the address of the depositor so registered, shall be sufficient and binding upon such depositor and holder of the certificate of deposit, irrespective of whether or not actual notice was received by him.

"No depositor shall have any right to withdraw any bonds or coupons from deposit hereunder, nor to take any separate action with respect to the deposited bonds or coupons. All deposited bonds and coupons shall remain in full force and effect for all purposes, and shall not be satisfied or discharged except if and as may be expressly declared or provided by the Committee.

"Seventh: Every depositor, for himself and not for any other, hereby sells, assigns, transfers and delivers to the Committee, its successors and assigns, each and every bond and coupon deposited hereunder by him, and also all his right, title, interest, property and claim at law, or in equity, by virtue of said bonds and coupons or any instrument securing the same, in and to the property and assets of the City, whether or not mortgaged to secure said bonds and coupons or not mortgaged to secure said bonds and coupons or otherwise, and any and all his claims against the City or any receiver or receivers, or under any receivership of the City, or any of its property, to the end that the Committee, as from time to time constituted, shall be

vested with full legal title to all the bonds and coupons deposited hereunder, and to each and every claim based thereon. Each depositor hereby covenants and agrees that he will at any time, on the request of the Committee, promptly execute and deliver any assignments, powers of attorney, or other instruments which the Committee may deem necessary or proper, effectually to vest full and complete ownership in the Committee of said deposited bonds and coupons as aforesaid.

27 "Eighth: The Committee may, as the owner and holder of the deposited bonds and coupons, demand, collect and receive all moneys due or payable thereon and may take or cause to be taken, or participate in or settle, compromise or discontinue any actions or proceedings for the collection of any of the bonds or coupons or the protection, enforcement or foreclosure of any legal or equitable lien securing or pertaining to same, including liens arising from the enforcement of taxes, levies, and assessments dedicated, levied or available for the service of the bonds, or for the appointment of a receiver of the City or for any purpose whatsoever. The Committee may give such directions, execute such papers, and do such acts, as the Committee may consider wise or proper in order to preserve or enforce the rights or to advance or serve the interest of the depositors.

"The Committee may from time to time, as it may deem wise, in any manner, purchase, acquire, contract in regard to, deal in, or sell or dispose of any property, real or personal, which may be or become affected by any such lien, foreclosures, or taxes, may make payments therefor or in regard thereto and in general carry out its powers under any of the provisions hereof. With regard to any properties or securities, acquired by it the Committee may exercise all rights of ownership, including voting rights and the rights to pledge.

"Ninth: To obtain funds to pay its expenses, to affect purchases or acquisitions as above stated or to discharge liens on property purchased or in which it has an interest, or to pay the obligations and expenses of the Committee, and as otherwise stated herein, or for any of the purposes of this agreement or in connection with any plan for readjustment, liquidation or settlement which the Committee may bring about or in which the Committee may participate, the Committee shall have power to borrow from time to time or at any time such moneys as the Committee
28 shall deem necessary or desirable, and upon such terms and conditions as it may fix, and to pledge all or any part of the bonds and coupons deposited hereunder as collateral security for the payment of any such loan or loans.

"Tenth: No Depositor shall under any circumstances be personally or individually liable in any way for the compensation of the Committee or its Counsel or its Depositaries or for the Committee's expense, or for any liability incurred by the Committee, or for anything done by the Committee whether the same be authorized by this agreement or not. The Committee shall have no power or authority to render any depositor individually or personally liable.

"Eleventh: The members of the Committee, the Committee's counsel, its agents and its depositaries, shall receive reasonable compensation for their services. The deposited bonds and coupons and all property purchased or acquired by or on behalf of the Committee as herein provided shall be charged with the payment of the compensation of the Committee, its counsel its agents and its depositaries, and all reasonable and proper expenses and expenditures of the Committee, its Counsel, its agents and its depositaries.

"Twelfth: In case any bonds, coupons or claims for interest shall be paid to it, the Committee may, in its discretion under such regulations as it may adopt from time to time, pay or cause to be paid to the holders of certificates of deposit issued hereunder the principal and/or interest thus received on account of the bonds and/or coupons represented by such certificates of deposit, respectively, but before making such payment, may deduct the share apportioned by the Committee to said bonds and/or coupons of the expenses and liabilities of the Committee, including all items of compensation provided for in the proceeding article, and in making such apportionment the Committee may take account of any extra or additional expenses, which in the opinion of the Com-
29 mittee is properly chargeable to any particular bonds and/or coupons, and such apportionment by the Committee shall be conclusive.

"Thirteenth: The Committee is authorized if and whenever it shall deem advisable, to prepare and adopt a plan or plans, for the refinancing, readjustment, liquidation or settlement of all or part of the bonds and/or other obligations of said City. The Committee may make a plan for the purchase or acquisition of any properties or securities of any kind, the purchase or acquisition of which, in the opinion of the Committee would aid in advancing the interest of the Depositors, or for the sale, exchange or disposition of any properties and assets acquired by the Committee or for sale, exchange or disposition in any way of the whole or any prorata part of the deposited bonds and coupons. The Committee may prepare a plan of its own and/or adopt, participate in, or co-operate in any plan or plans proposed or adopted by others. For the purposes of this agreement, any plan which the Committee shall either formulate, prepare, adopt, par-

ticipate or co-operate in, or approve, shall be deemed the plan of the Committee.

"The Committee may make any plan of any kind which it shall deem in the interest of the depositors.

"Any plan or agreement of refinancing and/or readjustment prepared or approved and adopted by the Committee as herein above provided, may, if the Committee deems it in the interest of depositing bondholders, in addition to making provisions for the bonds and coupons deposited with the Committee make provisions for any bonds and obligations, evidences of indebtedness or property of or claim against the City.

"The Committee shall deposit a copy of its plan with each of the Depositaries of the Committee.

"The Secretary of the Committee shall deposit in any post office or mail box, in the City of New York, a copy of such plan and agreement, in a postpaid wrapper, addressed to each of the holders of certificates of deposit at his post office address, as such address shall appear on the books of the Depositary of the Committee issuing such certificate of deposit, and in case such depositary or agency shall not have the address of such depositor, said plan shall be mailed to such Depositor in care of such depositary.

"Each holder of a certificate of deposit shall be held and be deemed to have assented and agreed to such plan, and such plan shall be binding and effective upon him and on all the bonds and coupons represented by the certificates of deposit held by him, unless he shall within thirty days after a copy of such plan shall have been deposited in a post office or mail box in the City of New York, notify the Secretary of the Committee, No. 120 Broadway, New York City, by registered mail, of his dissent therefrom, specifying

the number or numbers of the certificates of deposit held by him. Such notice of dissent must be mailed so as to reach such Secretary in New York City within such thirty days.

"Unless the holders of certificates of deposit representing two-thirds of the principal amount of the bonds deposited with all of the depositaries of the Committee shall within such thirty days assent to the Committee's plan or be deemed to assent to the same as herein provided, the plan shall at the expiration of said thirty days become operative, but if they do so assent, as above provided, the plan shall at the expiration of said thirty days become operative; but if the holders of certificates of deposit representing two-thirds of the principal amount of all the bonds deposited with the Depositary of the Committee shall, before the expiration of such thirty days, file with the Secretary of the Committee, file with the Secretary of the Committee their written assent to such plan, it
31 shall in such case immediately become operative.

"If such plan shall become operative and the Committee shall not abandon or recall such plan as hereinafter provided, the Committee shall return to each holder of a certificate of deposit dissenting within the thirty days as above provided, the bonds and coupons represented by his certificate of deposit, upon the surrender by him of his certificate of deposit properly indorsed, to the depositary of the Committee issuing such certificates, and upon the payment by him to such Depositary of any amount to be fixed by the Committee.

"The Committee may from time to time make such immaterial and unsubstantial modifications in any plan as it shall consider necessary, and the judgment of the Committee as to whether any change that it makes is immaterial and unsubstantial shall be final and conclusive.

"If the Committee shall make an amendment in or to a plan, which shall in its opinion materially affect the rights of the holders of certificates of deposit, a copy of such change or amendment shall be filed with depositary, and notice of the fact that a material amendment has been made in or to the plan, and the substance of such change and amendment shall be given in the same way and manner to each registered depositor as is above provided in case the Committee makes or adopts a plan, and for the same length of time, and any depositor who shall within thirty days after the mailing in the City of New York of such notice as above provided of such amendment notify the Secretary of the Committee in writing by registered mail addressed to the Secretary, that he does not accept the amendment, shall be deemed to have dissented from the entire plan as amended, unless the Committee abandon the amendment, but such notice must be mailed by such Depositor so that the same will reach the Secretary of the Committee in the City of New York within thirty days of the time the Secretary mailed the notice to such depositor; but in case a depositor fails to notify the Secretary within said thirty days as above provided, of his dissent, then he shall be deemed and held for all purposes to have assented to such plan as amended.

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"The Committee, at any time prior to carrying out any plan notwithstanding that it may have declared the same operative, may abandon and recall such plan, and in such case this agreement shall nevertheless continue in force as to the deposited bonds, as if no notice with respect to any plan and agreement had been given. The Committee after abandoning or recalling a plan or plans, may thereafter make a new plan or plans, and all of the provisions of this agreement hereinbefore or hereinafter set forth with refer-

ence to a plan shall apply to such new plan. If the Committee shall abandon and/or recall a plan the Secretary of the Committee shall mail to each depositor a notice thereof.

"The Committee may, for the purpose of ascertaining whether the holders of the Committee's certificates of deposit assent to or dissent from a plan, from time to time cause the books of the depositaries, for the transfer of certificates of deposit, to be closed during such period as the Committee may deem reasonable and necessary.

"Fourteenth: The Committee may from time to time increase the present Committee by electing an additional member or additional members, and the member or members so elected, together with those herein named or their successors, shall constitute the Committee under this agreement, with like force and effect as if they were specifically named. The Committee as at any time constituted, shall have all the powers, rights and interests of the Committee as originally formed. Any member of the Committee may resign, and the remaining members shall, in that case, and also in the case of the death of any member have power to fill the vacancy created by such resignation or death.

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"Any member may vote or act by proxy, who may, but need not be another member. The Committee may, except as herein specifically otherwise provided, act by a majority of its members either at a meeting or in writing without a meeting, but if any action is to be taken without a meeting each and every member or his proxy must receive full notice of such proposed action, so that he may have full opportunity to vote.

"Fifteenth: Each of the Depositaries shall be entitled to act in reliance on a certificate of the Secretary of the Committee as to the due adoption by it

of any resolution, or as to any action taken by the Committee, but in delivering any of the deposited bonds or coupons each Depositary shall require the order of the Chairman and Secretary of the Committee, certified by them to have been duly authorized by a majority of the Committee as at the time constituted, or if the Committee shall then have no Chairman, the order of the Secretary and two members so certified.

"Sixteenth: Any member of the Committee and any firm or corporation of which he may be a member or officer, and the Depositaries, and the bankers of the Committee or any of them, or their respective officers and agents, may be or become pecuniarily interested in any property or matters which are or may become subject to this agreement or to any plan and agreement of refinancing and/or readjustment which the Committee may approve or prepare and adopt as herein provided, and may contract with or deal with the Committee in the same manner as though such relationship, membership or interest did not exist, or be a member or manager of any committee or of any syndicate which may contract with the Committee or be formed in contemplation of, or in connection with any plan or agreement or refinancing and/or readjustment adopted under the authority of this agreement.

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"Seventeenth: The Committee is hereby authorized and empowered to construe this agreement and its construction of the same, made in good faith, shall be final, and conclusive and binding upon the depositors and holders of certificates of deposit. It may supply defects and omissions herein or make such modifications as in its judgment may be expedient or necessary to carry out the same properly and effectively, and its judgment as to such expediency or necessity shall

be final. The enumeration of special powers by any of the provisions of this agreement shall not be construed to limit any grant or general powers herein.

"Eighteenth: If for any reason the Committee shall consider it expedient at any time to terminate this agreement, it may do so by a vote of two-thirds of its members by giving like notice of its election so to do as hereinbefore provided in respect of the adoption of a plan. In the event of such termination of this agreement every depositor upon payment of such charge for the compensation of the Committee, its counsel, Depositaries and agents and their expenditures and expenses as the Committee may, in its sole and absolute discretion, determine, and upon reimbursement to the Committee of the share of such holder of all indebtedness, obligations and liabilities by the Committee incurred as fixed by the Committee shall, upon surrender of his certificate of deposit properly indorsed to the depositary which issued it, be entitled to the delivery of bonds and coupons to the amount represented by such certificate of deposit. In fixing and determining compensation, expenses and liabilities hereunder the Committee may take into account any extra or additional expense which in the opinion of the Committee is properly chargeable to any particular bonds and/or coupons and such appointment by the Committee shall be conclusive.

"The holder of a certificate of deposit upon the receipt by him of the securities, cash or property distributed by the Committee under any plan or otherwise (except a partial distribution of interest and/or principal which may be made notwithstanding anything herein contained) or by the surrender of his certificate of deposit will thereby release and discharge the Committee and the Depositaries from all liability

and accountability of every kind, character and description whatsoever.

"Nineteenth: An affidavit before a Notary Public by the Secretary of the Committee or any employe of the Secretary, of the mailing of any plant and/or any notices provided for or issued under this agreement shall be conclusive evidence of his acts and of the giving of said notices.

"Twentieth: This agreement shall not remain in force beyond the period of five years from the third day of January, 1930, unless extended by the committee with the consent of the holders of certificates of deposit representing a majority in amount of the deposited bonds and/or coupons.

"Twenty-first: This agreement may be executed in counterparts and all such counterparts shall be taken together as forming one agreement.

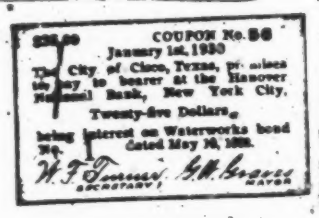
"In witness whereof, the members of the Committee have subscribed this agreement as of the day and year first above written and the parties of the second part have either subscribed this agreement or deposited their bonds and coupons and have accepted certificates of deposit therefor.

CHARLES P. BULLARD,
Chairman,
JOHN R. BRANDON,
HENRY E. POOR,
ROBERT D. WHITE,
Committee.

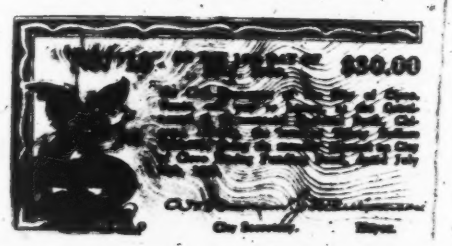
Filed November 10th, 1931.

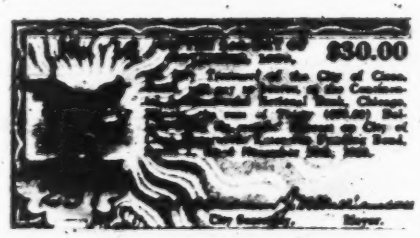
Upon motion of the attorneys for the plaintiff in the above entitled and numbered cause, it is ordered by the Court that photostatic copies of the bonds and coupons mentioned in the agreement of the attorneys for the plaintiffs and defendant, be attached as exhibits to the record in this case on appeal.

JAMES C. WILSON, Judge.

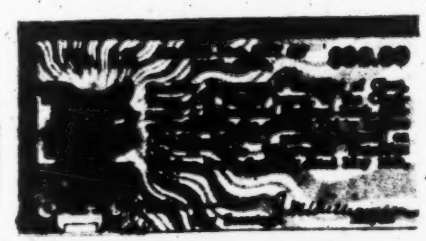

COUPON No. 86
January 1st, 1930
The City of Cisco, Texas, promises to pay to bearer at the Hanover National Bank, New York City,
Twenty-five Dollars,
being interest on Waterworks bond No. 1 dated May 10, 1902.
W. F. Turner, SECRETARY. G. W. Rogers, MAYOR

No bonds of this issue on deposit

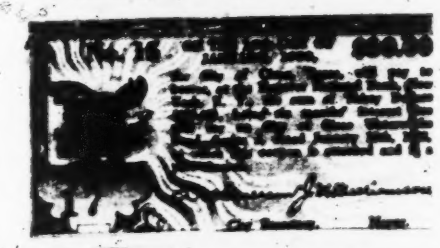




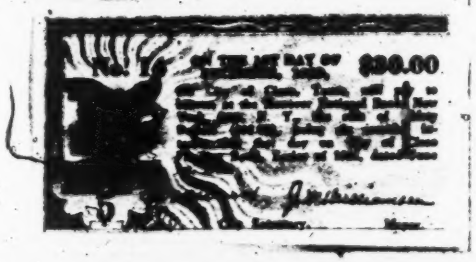
DATE OF ISSUE
May 10 1902
Nov 4 1907
March 10 1920
July 15 1920
Nov 24 1920.
Feb 15 1921



DATE OF ISSUE: May 10 1921



DATE OF ISSUE: January 15 1922



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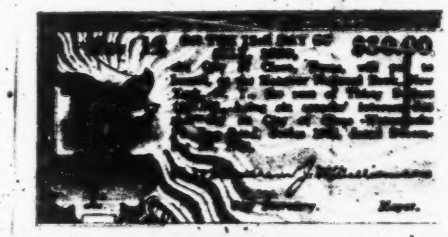

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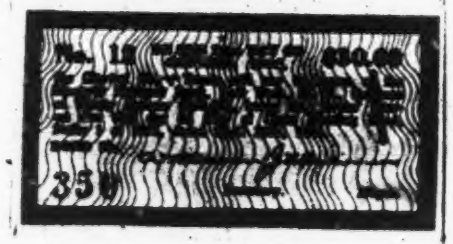

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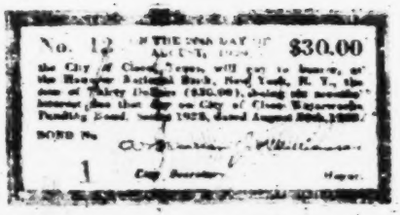
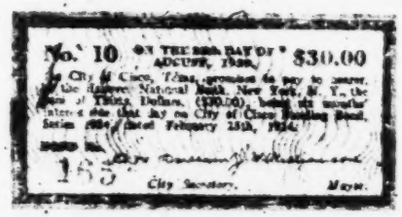
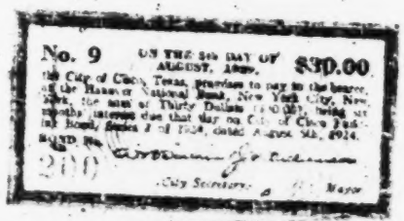
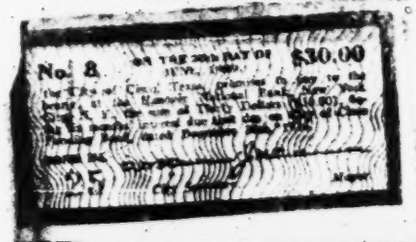
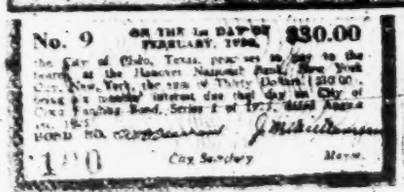

No. 12 $30.00
1


No. 10 ON THE 8th DAY OF AUGUST, 1924, $30.00
185


No. 9 ON THE 8th DAY OF AUGUST, 1924, $30.00
200


No. 8 ON THE 20th DAY OF $30.00
25

No. 8 ON THE TENTH DAY OF NOVEMBER, 1924 $30.00


No. 9 ON THE 1st DAY OF FEBRUARY, 1924, $30.00
180

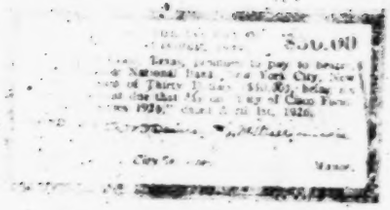
February 25, 1924.

August 5, 1924

December 20, 1924

May 10, 1925

August 1, 1925.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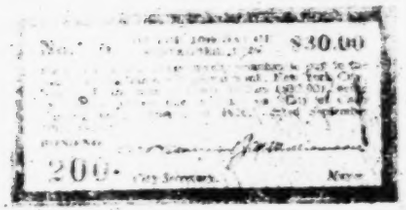
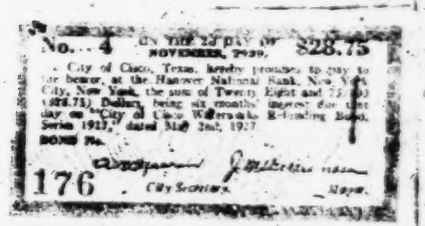
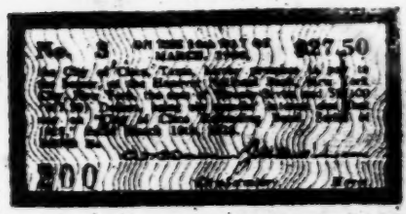
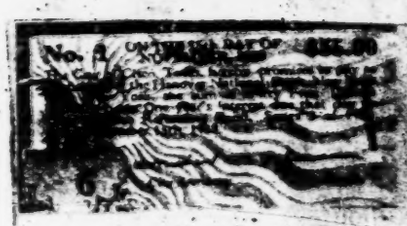

$30.00
200


No. 4 ON THE 28 DAY OF NOVEMBER, 1924, $28.75
176


No. 3 ON THE 20th DAY OF MARCH, 1926, $27.50
200


No. 2 ON THE 15th DAY OF $35.00

DATE OF ISSUE

April 1, 1926

May 2, 1927

March 10, 1926

November 15, 1926

UNITED STATES OF AMERICA

NUMBER

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Funding Bond

AMOUNT
$1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 20th day of December, 1945, at the Hanover National Bank, New York City, New York, the sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable December 20th, 1925, and semi-annually thereafter on the 20th day of June and the 20th day of December of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal and interest on this bond at maturity.

THIS BOND is one of a series of one hundred seventy-five (175) bonds, of like date and tenor, except as to maturity, aggregating One Hundred Seventy-Five Thousand Dollars ($175,000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is December 20th, 1924.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

Mayor, City of Cisco, Texas.

COUNTERSIGNED: C. R. Graham

City Secretary, City of Cisco, Texas.

REGISTERED: C. R. Graham

City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

NUMBER 93

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Funding Bond

SERIES 2 OF 1926

AMOUNT $1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 10th day of September, 1956, at the Hanover National Bank, New York City, New York, the principal sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable semi-annually on the 10th day of March and the 10th day of September in each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of two hundred (200) bonds, numbered consecutively from one (1) to two hundred (200), inclusive, of like date, tenor and effect, except as to number and maturity, aggregating the sum of Two Hundred Thousand Dollars ($200,000.00), issued by the City of Cisco, Texas, and exchanged for a like amount of legal, valid and binding outstanding indebtedness of said City, under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City on the 4th day of September, A. D. 1926, and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is September 10th, 1926.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond and the series of which it is a part, and of the warrants hereby funded, have been properly done and performed and have happened, in regular and due time, form and manner as required by law; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitations.

IN TESTIMONY WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

COUNTERSIGNED: _____ City Secretary, City of Cisco, Texas.

REGISTERED: _____ City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

NUMBER 94

STATE OF TEXAS COUNTY OF EASTLAND

City of Cisco Funding Bond

SERIES 1926

AMOUNT $1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 1st day of April, 1948, at the Hanover National Bank, New York City, New York, the principal sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable April 1st, 1927, and semi-annually thereafter on the 1st day of October and the 1st day of April of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of one hundred sixty-five bonds, numbered consecutively from one (1) to one hundred sixty-five (165), inclusive, of like date and tenor, except as to maturity, aggregating One Hundred Sixty Five Thousand Dollars ($165,000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is April 1st, 1926.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, Texas; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

J. M. Williamson
Mayor, City of Cisco, Texas.

COUNTERSIGNED: W. M. Statham
City Secretary, City of Cisco, Texas.

REGISTERED: W. M. Statham
City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

NUMBER 56

STATE OF TEXAS COUNTY OF EASTLAND

City of Cisco Funding Bond

SERIES 2 OF 1925

AMOUNT $1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 1st day of August, 1957, at the Hanover National Bank, New York City, New York, the principal sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable semi-annually on the 1st day of February and the 1st day of August of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of one hundred bonds, numbered consecutively from one (1) to one hundred (100), inclusive, of like date and tenor, except as to maturity, aggregating One Hundred Thousand Dollars ($100,000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is August 1st, 1925.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, Texas; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

J. M. Williamson
Mayor, City of Cisco, Texas.

COUNTERSIGNED: C. W. Beacham
City Secretary, City of Cisco, Texas.

REGISTERED: C. W. Beacham
City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

NUMBER 200

STATE OF TEXAS COUNTY OF EASTLAND

AMOUNT $1000

City of Cisco Refunding Bond

SERIES 1928

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 10th day of March, 1958, at the Hanover National Bank, New York City, New York, the principal sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof, at the rate of five and one-half per centum (5½%) per annum, interest payable March 10th, 1929, and semi-annually thereafter on the 10th day of September and the 10th day of March of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal and interest on this bond at maturity.

THIS BOND is one of a series of three hundred twenty-five (325) bonds, numbered consecutively from one (1) to three hundred twenty-five (325), inclusive, of like date, tenor and effect, except as to number and maturity, aggregating the sum of Three Hundred Twenty-Five Thousand Dollars ($325,000.00), issued by the City of Cisco, Texas, and exchanged for a like amount of legal, valid and binding outstanding indebtedness of said City, under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City on the 6th day of March, A.D. 1928, and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is March 10th, 1928.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond and the series of which it is a part, and of the warrants hereby refunded, have been properly done and performed and have happened, in regular and due time, form and manner as required by law; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN TESTIMONY WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

J. M. Williamson
Mayor, City of Cisco, Texas.

COUNTERSIGNED: W. M. Statham
City Secretary, City of Cisco, Texas.

REGISTERED: W. M. Statham
City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

NUMBER 157

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Funding Bond
Series 1924

AMOUNT $1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to bearer on the 25th day of February, 1964, at the Hanover National Bank, New York, N. Y., the sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable February 25th, 1925, and semi-annually thereafter on the 25th day of August and the 25th day of February of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of two hundred (200) bonds, of like date and tenor, except as to maturity, aggregating Two Hundred Thousand Dollars, ($200.000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is February 25th, 1924.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and that the total indebtedness of said City, including this bond, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

Mayor, City of Cisco, Texas.

COUNTERSIGNED: W. D. Farnam
City Secretary, City of Cisco, Texas.

REGISTERED: W. D. Farnam
City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

200

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Funding Bond
Series 2 of 1924

$1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer on the 5th day of February, 1964, at the Hanover National Bank, New York City, New York, the sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable August 5th, 1925, and semi-annually thereafter on the 5th day of February and the 5th day of August of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of two hundred (200) bonds, of like date and tenor, except as to maturity, aggregating Two Hundred Thousand Dollars ($200,000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinances above mentioned, is August 5th, 1924.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

UNITED STATES OF AMERICA

NUMBER 173

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Funding Bond
Series 1, of 1923

AMOUNT $1000

THE CITY OF CISCO, a Municipal Corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to bearer on the 20TH DAY OF APRIL, 1954, at the Hanover National Bank, New York, N. Y., the sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum; interest payable April 20th, 1924, and semi-annually thereafter on the 20th day of October and the 20th day of April of each year, principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of three hundred fifty (350) bonds, of like date and tenor, except as to maturity, aggregating Three Hundred Fifty Thousand Dollars ($350,000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is APRIL 20TH, 1923.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco; and that the said indebtedness of said City, including this bond, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

Commissioner.

City Secretary, City of Cisco, Texas

Mayor, City of Cisco, Texas

Commissioner.

UNITED STATES OF AMERICA

NUMBER 41

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Waterworks Funding Bond Series 1923

AMOUNT $1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to bearer on the 20th day of February, 1948, at the Hanover National Bank, New York, N. Y., the sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable semi-annualy on the 20th day of February and the 20th day of August of each year, principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of, and interest on this bond at maturity.

THIS BOND is one of a series of two hundred (200) bonds, of like date and tenor, except as to maturity, aggregating Two Hundred Thousand ($200,000.00) Dollars, issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is August 20th, 1923.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco; and that the total indebtedness of said City, including this bond, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

Jo M Williamson
Mayor, City of Cisco, Texas.

COUNTERSIGNED: W R Beatham
City Secretary, City of Cisco, Texas.

REGISTERED: W R Beatham
City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

NUMBER 110

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Waterworks Refunding Bond, Series 1927

$1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 2nd day of May, 1955, at the Hanover National Bank, New York City, New York, the principal sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of five and three-quarters per centum (5¾%) per annum, interest payable May 2nd, 1928, and semi-annually thereafter on the 2nd day of November and the 2nd day of May of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of two hundred twenty five (225) bonds, numbered consecutively from one (1) to two hundred twenty five (225), inclusive, of like date, tenor and effect, except as to number and maturity, aggregating the sum of Two Hundred Twenty Five Thousand ($225,000.00) Dollars, issued by the City of Cisco, Texas, and exchanged for a like amount of legal, valid and binding outstanding indebtedness of said City, under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City on the 2nd day of May, A.D. 1927, and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is May 2nd, 1927.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond and the series of which it is a part, and of the warrants hereby refunded, have been properly done and performed and have happened, in regular and due time, form and manner as required by law; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN TESTIMONY WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

J. M. Williamson

NUMBER 6

DENOMINATION $1000

UNITED STATES OF AMERICA

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco
Refunding Bond
Series 2 of 1928

THE CITY OF CISCO, a municipal corporation duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 15th day of November, 1944, at the HANOVER NATIONAL BANK, New York City, New York, the principal sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of five and one half per centum (5½%) per annum, interest payable November 15th, 1929, and semi-annually thereafter on the 15th day of May and the 15th day of November of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of two hundred twenty six bonds, numbered consecutively from one (1) to two hundred twenty six (226), inclusive, of like date, tenor and effect, except as to number and maturity, aggregating the sum of Two Hundred Twenty Six Thousand Dollars ($226,000.00), issued by the City of Cisco, Texas, and exchanged for a like amount of legal, valid and binding outstanding indebtedness of said City, under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is November, 15th, 1928.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond and the series of which it is a part, and of the warrants hereby refunded, have been properly done and performed and have happened, in regular and due time, form and manner as required by law; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN TESTIMONY WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

J. M. Williamson
Mayor, City of Cisco, Texas.

COUNTERSIGNED:

C. W. Statham
City Secretary, City of Cisco, Texas.

REGISTERED:

C. W. Statham
City Treasurer, City of Cisco, Texas.

Number 8

Amount $1,000.00

UNITED STATES OF AMERICA

STATE OF TEXAS
COUNTY OF EASTLAND

CITY OF CISCO PAVING FUNDING BOND

SERIES 1

THE CITY OF CISCO, a Municipal Corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to bearer on the 15th day of July, 1930, at the Continental & Commercial National Bank, Chicago, Illinois, the sum of

ONE THOUSAND DOLLARS

($1,000.00) in lawful money of the United States of America, with interest thereon, from date hereof, at the rate of six per centum (6%) per annum, interest payable semi-annually January 15th and July 15th of each year, principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City are hereby irrevocably pledged for the prompt payment of the principal and interest of this bond at maturity.

THIS BOND is one of a series of one hundred (100) bonds, of like date and tenor, except as to maturity, aggregating One Hundred Thousand ($100,000.00) Dollars, issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, dated November 20th, 1919, issued for the purpose of constructing street improvements in said City, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco, and pursuant to an ordinance legally passed by the Board of Commissioners of said City, at a regular meeting of said Board on July 12, 1930, which ordinance is of record in Book 2, at page 12, et seq., of the Minutes of said City Commission.

THE DATE of this bond, pursuant to the ordinance above mentioned, is July 15th, 1930.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done, happened and performed in regular and due time, form and manner, as required by the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco, and that the said Commission of said City, exercising said bond, powers under any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, by its Board of Commissioners, has caused this bond to be signed by its Mayor, countersigned by the City Secretary, registered by the City Treasurer, and the corporate seal of said City to be impressed hereon, and the same to be dated as of the date last above written.

J. Williamson
Mayor, City of Cisco, Texas.

COUNTERSIGNED:

C. W. Brashear
City Secretary, City of Cisco, Texas.

REGISTERED:

C. W. Brashear
City Treasurer, City of Cisco, Texas.

Number

Amount
$1000

UNITED STATES OF AMERICA

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Waterworks Funding

6

$1000

UNITED STATES OF AMERICA

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Funding Bond Series of 1922

THE CITY OF CISCO, a Municipal Corporation duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to bearer on the 1st day of June, 1944, at the Hanover National Bank, New York City, New York, the sum of

One Thousand Dollars

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable June 1st, 1923, and semi-annually thereafter on the 1st day of June and the 1st day of December of each year, principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of one hundred (100) bonds, of like date and tenor, except as to maturity, aggregating One Hundred Thousand Dollars ($100,000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, issued for the purpose of the construction of street paving and improvements in and for said City, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City on the 8th day of May, 1922, and of record in Book 1, page 158 et seq., of the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is June 1st, 1922.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco; and that the total indebtedness of said City, including this bond, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date first above written.

Mayor, City of Cisco, Texas.

COUNTERSIGNED:

City Secretary, City of Cisco, Texas.

REGISTERED:

City Treasurer, City of Cisco, Texas.

Number
94

Amount
$1000

UNITED STATES OF AMERICA

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Waterworks Bond
Series 2

THE CITY OF CISCO, in the County of Eastland and State of Texas, for value received, hereby promises to pay to bearer on the 15th day of January, 1950, at the Hanover National Bank, New York, N. Y., the principal sum of

One Thousand Dollars

($1,000.00), [illegible] of the United States of America, with interest thereon from date hereof at the rate of [illegible] per annum, payable January 15th, 1932, and semi-annually thereafter on the 15th day of July, and the 15th day of January of each year upon presentation and surrender of proper coupons [illegible] hereof, as they severally mature, at which time interest to [illegible] and payable semi-annually thereafter with interest thereon, evidenced by coupons hereto appended, at the bank above named.

This bond is one of a series of [illegible] bonds, numbered consecutively from one (1) to [illegible] inclusive, all of the aggregate principal amount of One Million Thirty-Five Thousand Dollars ($1,035,000.00) each, comprising the [illegible] issue of Waterworks Bonds, authorized for the purpose of the construction of [illegible] for the City of Cisco, under and by virtue of the Constitution and laws of the State of Texas, and the charter of the City of Cisco, Texas, and an ordinance [illegible] passed and approved by the City Council of said City on the 25th day of January, 1932, and [illegible] and the City Commission.

[illegible] with the ordinance above mentioned, to January 15th, 1952.

[illegible] that the interest of this bond, and the series of which [illegible] issue of the combined net revenue pledging power of the [illegible] and [illegible] system, which said City on the 6th day of [illegible] ordinance providing in and by the issuance of this [illegible] authorized to mature and does mature, form and manner, [illegible] for the levy and collection of taxes has been made [illegible] and to the [illegible] payment of this bond, and the series of which it is [illegible] and that the total indebtedness [illegible] created on the said 15th January 1932 [illegible] and that [illegible] bond and the series of which it is a part, does not exceed any [illegible] limitation, [illegible].

IN TESTIMONY WHEREOF, the City of Cisco has caused the corporate seal of said City to be hereto affixed, and this [illegible] to be signed by the Mayor, countersigned by the City Secretary, and registered by the City Treasurer, on the [illegible] day of January, 1932.

J. M[illegible]
Mayor, City of Cisco, Texas.

COUNTERSIGNED: [illegible]
City Secretary, City of Cisco, Texas.

REGISTERED: [illegible]
City Treasurer, City of Cisco, Texas.

No 233

$ 1000

STATE OF TEXAS
COUNTY OF EASTLAND

CITY OF CISCO

FUNDING BOND

SERIES 1925

The City of Cisco, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 10th day of May, 1958, at the Hanover National Bank, New York City, New York, the sum of

ONE THOUSAND DOLLARS

in lawful money of the United States of America, with interest thereon from date hereof at the rate of Six per centum (6%) per annum, interest payable semi-annually on the 10th day of November and the 10th day of May of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of three hundred thirty-four bonds of like date and tenor, except as to maturity, aggregating Three Hundred Thirty-Four Thousand Dollars ($334,000.00) issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration, under and by virtue of the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is May 10th, 1925.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond have been properly done and performed and have happened, in regular and due time, form and manner, as required by law; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

Mayor, City of Cisco, Texas.

Countersigned:

City Secretary, City of Cisco, Texas.

Registered:

City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

Number
73

Amount
$1,000.00

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Waterworks Extension Funding Bond, Series 1

THE CITY OF CISCO, a Municipal Corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to bearer on the 24th day of November, 1952, at the Continental & Commercial National Bank, Chicago, Illinois, the sum of

ONE THOUSAND DOLLARS

($1,000.00) in lawful money of the United States of America, with interest thereon from date hereof, at the rate of six per centum (6%) per annum, interest payable semi-annually on the 24th day of May and the 24th day of November of each year, principal and interest payable at the [illegible]; and the full faith and credit of the City of Cisco, and all of the [illegible] pledged for the prompt payment of the principal of and interest on this bond.

THIS BOND is one of a series of [illegible] maturity, aggregating Three Hundred Thousand [illegible] a like amount of the outstanding [illegible] tion of waterworks extensions to and for [illegible] tion; under and by virtue of the Constitution [illegible] the City of Cisco, and pursuant to an [illegible] City and of record in the minutes of said [illegible]

THE DATE of this bond, to conformity [illegible]

AND IT IS HEREBY CERTIFIED AND RECITED that [illegible] the Constitution and laws of the State of [illegible] sufficient to pay the interest on said bonds as the same shall [illegible] at maturity; that all acts, conditions and things required to be [illegible] this bond, have been properly done, happened and performed in due time, form and manner as required by the Constitution and laws of the State of Texas and the ordinances of the City of Cisco; and that the issuance of this bond does not violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco has caused this bond to be signed by the [illegible] City Treasurer, as of the date last above written.

Mayor, City of Cisco

COUNTERSIGNED:

City Secretary, City of Cisco

REGISTERED:

City Treasurer, City of Cisco

Number 236

Amount $1,000.00

UNITED STATES OF AMERICA

STATE OF TEXAS

COUNTY OF EASTLAND

City of Cisco Waterworks Extension Funding Bond, Series 2

THE CITY OF CISCO, a Municipal Corporation, duly incorporated under the laws of the State of Texas, for value received is indebted to and hereby promises to pay to bearer on the 10th day of May, 1956, at the Continental & Commercial National Bank, Chicago, Illinois, the sum of

ONE THOUSAND DOLLARS

($1,000.00) in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable semi-annually on the 10th day of May and the 10th day of November of each year, principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of three hundred thirty (330) bonds, of like date and tenor, except as to maturity, aggregating Three Hundred Thirty Thousand Dollars ($330,000.00), issued for the purpose of funding a like amount of the outstanding warrant indebtedness of the City of Cisco, issued for the purpose of the construction of waterworks extension and improvements for which said City received full value and consideration therefor and by virtue of the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, conformably with the ordinance above mentioned, is May 10th, 1921.

AND IT IS HEREBY EXPRESSED, that the City Commission has made provision that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco; and that the total indebtedness of said City, including this bond, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco has caused the seal of said City to be hereto affixed and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

J. M. Williamson
Mayor, City of Cisco, Texas.

REGISTERED:

E. W. Dickson
City Treasurer, City of Cisco, Texas.

COUNTERSIGNED:

[illegible]
City Secretary, City of Cisco, Texas.

$1,000.00
UNITED STATES OF AMERICA

UNITED STATES OF AMERICA

STATE OF TEXAS
COUNTY OF EASTLAND

CITY OF CISCO

Waterworks Bond

THE CITY OF CISCO, in the County of Eastland and State of Texas, for value received, hereby promises to pay to bearer on the 10th day of March, 1939, at the Continental & Commercial National Bank, Chicago, Illinois, the sum of

One Thousand Dollars

in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per cent. (6%) per annum. Interest payable March 10th, 1931, and thereafter on the 10th day of September and the 10th day of March of each year upon presentation and surrender of proper coupon; and the Treasurer of said City is hereby authorized, ordered and directed to pay to bearer said principal sum, together with interest thereon, evidenced by coupons hereto annexed, at the bank above named.

This Bond is one of a series of five hundred (500) bonds, numbered consecutively from one (1) to five hundred (500) inclusive, in the denomination of One Thousand Dollars ($1,000.00) each, aggregating the sum of Five Hundred Thousand Dollars ($500,000.00), issued for the purpose of the construction of the improvements and extensions to the waterworks system of said City, under and by virtue of the Constitution and Laws of the State of Texas and the City Charter of the City of Cisco, Texas, and in pursuance of an ordinance passed by the City Commission of the City of Cisco on the 10th day of March, 1930, and recorded in Book 2, at page 20, et seq. of the Minutes of said City Commission, as amended by an ordinance passed by said City Commission on the 28th day of April, 1930, and recorded in Book 2, at page 29, et seq. of the Minutes of said City Commission.

The Date of this bond, in conformity with the ordinance above mentioned, is March 10th, 1930.

And It Is Hereby Certified and Recited that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done, have happened and been performed in regular and due form as required by law, and that the total indebtedness of said City, including this bond, does not exceed the constitutional or statutory limitation.

IN TESTIMONY WHEREOF, the City of Cisco has caused the corporate seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

Mayor, City of Cisco, Texas.

Countersigned:

City Secretary, City of Cisco, Texas.

Registered:

United States OF AMERICA

No. 1

The State of Texas

$1,000.00

CITY OF CISCO

COUNTY OF EASTLAND.

WATERWORKS BOND.

The City of Cisco, in the County of Eastland, a municipal corporation duly incorporated under the laws of the State of Texas, for value received, hereby promises to pay to the bearer forty years from the date hereof, at the Hanover National Bank in New York, State of New York, the sum of ONE THOUSAND ($1,000.00) DOLLARS, in lawful money of the United States of America, together with interest thereon from date hereof at the rate of five per cent per annum interest payable semi-annually on the first day of January and the first day of July respectively, of each year upon presentation and surrender of the [illegible] at the Hanover National Bank, New York, State of New York.

The City of [illegible] hereby [illegible] that [illegible] and [illegible] [illegible] [illegible]

60 (Title Omitted.)

To the Honorable James C. Wilson Judge of said Court:

Now comes Reserve Loan Life Insurance Company, a life insurance corporation, incorporated and existing under and by virtue of the laws of the State of Indiana, and having its office and principal place of business in the City of Indianapolis, Indiana, and with leave of the Court first had and obtained, files this, its Plea of Intervention in the above numbered and entitled cause, and for cause of action against Defendant. City of Cisco, alleges the following:

I.

This Intervener is a resident and citizen of the State of Indiana. The defendant, City of Cisco, is and at all times heretofore has been a municipal corporation organized and existing under the general laws of the State of Texas, and since July 28th, 1919, has been incorporated and acting under a special charter as provided by the laws of the State of Texas. The defendants are residents and citizens of the County of Eastland, State of Texas, which is within the Abilene District of the District Court of the United States for the Northern District of Texas.

II.

This is a suit between citizens of different states, it being a suit between a resident of the City of Indianapolis, State of Indiana, as plaintiff intervener, against the City of Cisco, Texas, J. T. Berry, of Cisco,
61 Texas, being its Mayor, which is a citizen of the State of Texas and has its place of residence in the Abilene Division of the District Court of the United States for the Northern District

of Texas, and the matter in controversy herein, exclusive of interest and costs, exceeds the sum of Three Thousand ($3,000.00) Dollars.

III.

On September 10th, 1926, the defendant City of Cisco, did issue and execute its bonds denominated the City of Cisco Waterworks Funding Bonds, Series No. 2 of 1926", in the aggregate sum of $200,000.00, said bonds being numbered consecutively from One (1) to Two Hundred (200), inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable March 10th, and September 10th in each year, principal payable serially on September 10th from 1947 to 1966, inclusive.

IV.

At the time of the issuance of said bonds, coupons were executed and issued and attached to said bonds by said City, to evidence and represent the interest payment on said respective bonds as therein provided. Each and all of said principal bonds and each and all of said interest coupons were in form and in fact negotiable instruments, due and payable to bearer. That each and all of said principal bonds and each and all of said interest coupons were duly executed by the Mayor, City Secretary and Treasurer of said City, who were duly authorized under the laws and constitution of the State of Texas and by terms of the City Charter of said City, so to execute the same. That prior to the sale of any of said principal bonds or interest coupons thereon, the same were duly registered with the Comptroller of Public Accounts of the State of Texas, and approved as valid by the Attorney General of the State of Texas, whose certificate ap-

62 proving same was duly issued at the time of the authorization, and prior to the issuance or sale of said bonds and interest coupons thereon, the City Commission of said City, as authorized and required by law and the Constitution of the State of Texas, did levy a continuing, direct, annual ad valorem tax on all taxable property in said City, sufficient to pay the interest on said bonds, and to create a sinking fund sufficient to redeem the principal of said bonds, as the same should mature.

That upon the issuance of said bonds and interest coupons, after the registration and approval thereon as aforesaid, and prior to the respective maturities thereof, and also prior to the maturities of any of the interest coupons hereinafter described as being past due, all of said bonds with the interest coupons attached thereto, were sold by the said City for a consideration, in each instance such as was required by law, and the consideration, in cash, was duly received therefor by said City and the proper officials thereof; and thereafter the said bonds and the unpaid coupons thereon, in due course, before maturity, for a valuable consideration were purchased by and became the property of this intervener, and intervener is now the holder of same.

V.

Said bonds and interest coupons owned by this Intervener, and being a part of said Waterworks Funding Bonds, Series No. 2, dated September 10th, 1926, as above alleged, are as follows:

Number.	Maturity Date.	Amount.
1 to 10	September 10, 1947	$10,000.00
11 to 20	September 10, 1948	10,000.00

21 to 30	September 10, 1949	10,000.00
41 to 50	September 10, 1951	10,000.00
51 to 60	September 10, 1952	10,000.00

Said bonds aggregating $50,000.00 are not due as appears from the above description thereof, but the interest coupons thereon are due and unpaid as follows:

Interest coupons due September 10, 1929, March 10, 1930, September 10, 1930, March 10th, 1931, and September 10th, 1931 are now at this time past due and unpaid, and although and notwithstanding this Intervener has repeatedly made demand of the Defendant City and its officers to pay the same, they have declined and refused to pay them or any part thereof, and there is now due and owing this intervener on said past due interest coupons, the sum of $7,500.00, being $1,500.00 due September 10th, 1929, $1,500.00 due March 10th, 1930, $1500.00 due September 10th, 1930, $1,500.00 due March 10th, 1931 and $1,500.00 due September 10th, 1931.

Premises considered Intervener prays that they have judgment against the defendant city for the amount of all past due interest coupons held and owned by this intervener, as above alleged, and that they have judgment establishing the status of said bonds and declaring them valid as outstanding obligations against said City of Cisco. Intervener prays for costs of suit, and for such other and further relief, general and special, to which in the premises it may be entitled.

McBRIDE, O'DONNELL &
HAMILTON,
By L. C. McBRIDE.
FRANK G. WEST,
Attorneys for Intervener, Reserve Loan Life Insurance Company.

Filed October 14th, 1931.

64 (Title Omitted.)

To the Honorable James C. Wilson, Judge of said Court:

Now comes the Brotherhood of Locomotive Firemen and Enginemen, an unincorporated association formed and existing as an entity under the laws of the State of Ohio, with its office and principal place of business in Cleveland, Ohio, with D. B. Robertson as its President, and Albert Phillips its General Secretary and Treasurer, and with leave of the Court first had and obtained files this its plea of intervention in the above numbered and entitled cause, and for cause of action against the defendant, City of Cisco, Texas, and J. T. Berry being its Mayor, alleges the following:

1.

Intervener and its officers are residents and citizens of the State of Ohio. The defendant, City of Cisco, Texas, is and at all times heretofore has been a municipal corporation organized and existing under the general laws of the State of Texas, and since July 28th, 1919, has been incorporated and acting under a special charter as provided by the laws of the State of Texas. The defendants are resident citizens of the County of Eastland, State of Texas, which is within the Abilene Division of the District Court of the United States for the Northern District of Texas.

2.

This is a suit between citizens of different states, it being a suit between a resident and citizen of the State of Ohio, as plaintiff intervener, against the City of Cisco, Texas, and the matter in controversy
65 herein, exclusive of interest and costs, exceeds the sum of $3,000.00, and further pleading the intervener says:

3.

That on the various and sundry dates as follows, the defendant City of Cisco did execute and issue its various and sundry bonds as follows, to-wit:

(a) On, to-wit, March 10, 1920, its bonds in the aggregate sum of $500,000.00, denominated "City of Cisco Waterworks Bonds," bearing date March 10th, 1920, numbered consecutively from 1 to 500, inclusive, in denomination of $1,000.00 each, bearing interest at 6% per annum, payable March 10th, 1921, and thereafter semi-annually on September 10th and March 10th in each year, principal payable serially on March 10th from 1923 to 1960, inclusive.

(b) On, to-wit, July 15th, 1920, its bonds in the aggregate sum of $100,000.00, denominated "City of Cisco Paving Fund Bonds, Series 1," bearing date July 15th, 1930, numbered consecutively from 1 to 100 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable January and July 15th in each year, principal payable serially on July 15th from 1930 to 1949, inclusive.

(c) On, to-wit, November 24th, 1920, its bonds in the aggregate sum of $300,000.00, denominated "City of Cisco Waterworks Extension Funding Bonds, Series 1," bearing date November 24th, 1920, numbered consecutively from 1 to 300 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable May and November 24th in each year, principal payable serially on November 24th, from 1950 to 1960, inclusive.

(d) On, to-wit, May 10th, 1921, its bonds in the aggregate sum of $350,000.00, denominated "City of Cisco Waterworks Extension Funding Bonds," bear-

ing date May 10th, 1921, numbered consecutively from 1 to 350 inclusive, in denomination of $1,-
66 000.00 each, bearing interest at the rate of 6% per annum, payable May and November 10th in each year, the principal of said bonds payable serially on May 10th from 1941 to 1961, inclusive.

(e) On, to-wit, January 15th, 1922, its bonds in the aggregate sum of $500,000.00, denominated "City of Cisco Waterworks Bonds, Series 2," bearing date January 15th, 1922, numbered consecutively from 1 to 500, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable January and July 15th in each year, principal payable serially on January 15th from 1933 to 1960, inclusive.

(f) On, to-wit, June 1st, 1922, its bonds in the aggregate sum of $100,000.00, denominated "City of Cisco Funding Bonds, Series of 1922," bearing date June 1st, 1922, numbered consecutively from 1 to 100 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable June and December 1st, in each year, principal payable serially on June 1st from 1943 to 1962, inclusive.

(g) On, to-wit, December 1st, 1922, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Waterworks Funding Bonds, Series 1922," bearing date December 1st, 1922, numbered consecutively from 1 to 200, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable January and July 15th, in each year, principal payable serially on January 15th from 1943 to 1962, inclusive.

(h) On, to-wit, April 20th, 1923, its bonds in the aggregate sum of $350,000.00, denominated "City of

Cisco Funding Bonds, Series 1 of 1923," bearing date April 20th, 1923, numbered consecutively from 1 to 350, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable April and October 20th in each year, principal payable serially on April 20th from 1943 to 1962, inclusive.

67 (i) On, to-wit, August 20th, 1923, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Waterworks Funding Bonds, Series 1923," bearing date August 20th, 1923, numbered consecutively from 1 to 200 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable 20th day of February and August in each year, principal payable serially on February 20th from 1944 to 1963, inclusive.

(j) On, to-wit, February 25th, 1924, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Funding Bonds, Series 1924," bearing date February 25th, 1924, numbered consecutively from 1 to 200 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable 25th day of February and August in each year, principal payable serially on February 25th from 1949 to 1964, inclusive.

(k) On, to-wit, August 5th, 1924, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Funding Bonds, Series 2 of 1924," bearing date August 5th, 1924, numbered consecutively from 1 to 200 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable February and August 5th in each year, principal payable serially on February 5th from 1945 to 1964, inclusive.

(l) On, to-wit, December 20th, 1924, its bonds in the aggregate sum of $175,000.00, denominated "City

of Cisco Funding Bonds," bearing date December 20th, 1924, numbered consecutively from 1 to 175, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable June and December 20th, in each year, principal payable serially on December 20th from 1945 to 1964, inclusive.

(m) On, to-wit, May 10th, 1925, its bonds in the aggregate sum of $334,000.00, denominated "City of Cisco Funding Bonds, Series 1925," bearing date May 10th, 1925, numbered consecutively from 1 to 334, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable May and November 10th in each year, principal payable
68 serially on May 10th from 1931 to 1965, inclusive.

(n) On, to-wit, August 1st, 1925, its bonds in the aggregate sum of $100,000.00, denominated "City of Cisco Funding Bonds, Series 2 of 1925," bearing date August 1st, 1925, numbered consecutively from 1 to 100 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable February and August 1st in each year, principal payable serially on August 1st from 1946 to 1965, inclusive.

(o) On, to-wit, April 1st, 1926, its bonds in the aggregate sum of $165,000.00, denominated "City of Cisco Funding Bonds, Series 1926," bearing date April 1st, 1926, numbered consecutively from 1 to 165, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable April and October 1st in each year, principal payable serially on April 1st from 1937 to 1956, inclusive.

(p) On, to-wit, September 10th, 1926, its bonds in the aggregate sum of $200,00.00, denominated "City of Cisco Funding Bonds, Series 2 of 1926," bearing date

September 10th, 1926, numbered consecutively from 1 to 200, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable March 10th and September 10th in each year, principal payable serially on September 10th from 1947 to 1966, inclusive.

(q) On, to-wit, May 2nd, 1927, its bonds in the the aggregate sum of $200,000.00, denominted "City of Cisco Waterworks Refunding Bonds, Series 1927," bearing date May 2nd, 1927, numbered consecutively from 1 to 225, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 5¾% per annum, payable May and November 2nd in each year, principal payable serially on May 2nd from 1943 to 1967, inclusive.

(r) On, to-wit, March 10th, 1928, its bonds in the aggregate sum of $325,000.00, denominated "City of Cisco Refunding Bonds, Series of 1928," bearing date March 10th, 1928, numbered consecutively from 1 to 325 inclusive, in denomination of $1,000.00 each, bearing interest at 5½% per annum, payable
69 March and September 10th in each year, principal payable serially on March 10th from 1939 to 1968, inclusive.

(s) On, to-wit, November 15th, 1928, its bonds in the aggregate sum of $226,000.00, denominated "City of Cisco Refunding Bonds, Series 2 of 1928," bearing date November 15th, 1928, numbered consecutively from 1 to 226, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 5½% per annum, payable May and November 15th in each year, principal payable serially on November 15th from 1944 to 1968, inclusive.

(t) On, to-wit, February 15th, 1921, its bonds aggregating $60,000.00, denominated "City of Cisco Sanitarium and Park Bonds," bearing date February 15th, 1921, bearing interest at the rate of 5% per annum, payable February and August 15th, in each year, in denomination of $1,000.00 each, and being numbered consecutively from 1 to 60, inclusive.

(u) On, to-wit, May 10th, 1902, its bonds denominated "City of Cisco Waterworks Bonds," bearing date May 10th, 1902, in denomination of $1,000.00 each, and bearing interest at the rate of 5% per annum.

4.

That at the time of the execution and issuance of the various and sudry bonds aforesaid, coupons were executed and issued by said City to evidence and represent the interest payments on said respective bonds as therein provided. That each and every of said principal bonds, and each and every of said interest coupons, were in form and in fact negotiable instruments, due and payable to bearer. That each and every of said principal bonds, and each and every of said interest coupons, were duly executed by the Mayor, City Secretary and Treasurer of said City, being thereunto duly authorized in law, by the Constitution of the State of Texas, and by the terms of the Charter of said City. That prior to the
70 sale by said City of any of said principal bonds or interest coupons thereon, same were duly registered with the Comptroller of Public Accounts of the State of Texas, and approved as valid by the Attorney General of the State of Texas and his certificate issued to that effect. That at the time of the authorization, and prior to the issuance or sale of said bonds or interest coupons thereon, the City Commission of said City, as authorized and required

by law and the Constitution of the State of Texas, did levy a continuing, direct, annual ad valorem tax on all taxable property in said City, sufficient to pay the interest on said bonds, and to create a sinking fund sufficient to redeem the principal of said bonds, as same should mature.

That upon the issuance of the aforesaid bonds and interest coupons, after the registration and approval thereof as aforesaid, and prior to the respective maturities thereof, all of said bonds, with the interest coupons thereto, were sold by said City for a consideration in each instance such as was required by law, and the consideration, in cash, duly received therefor by said City and the proper officials thereof.

Intervener is the owner of, and holds the title to various and sundry of said bonds and interest coupons thereon, including the following:

(a) Of the issue of March 10th, 1920, fifty bonds aggregating $50,000.00, drawing interest at the rate of 6% per annum from date, none of the principal of said bonds having yet matured but interest coupons thereon having matured as follows: March 10th, 1930, $3,000.00, and March 10th, 1931, $3,000.00, making an aggregate of past due and delinquent interest by reason of the nonpayment of interest coupons at dates of the maturity thereof of the sum of $6,000.00.

71 (b) Of the issue of March 10th, 1928, forty-seven bonds aggregating $47,000.00, drawing interest at the rate of 5½% per annum from date, none of the principal of said bonds having yet matured but interest coupons thereon having matured as follows: March 10th, 1930, $2,585.00, and March 10th, 1931, $2,585.00, making an aggregate of past due and delinquent interest by reason of the nonpayment of interest coupons at dates of the maturity thereof of the sum of $5,170.00.

(c) Of the issue of September 10th, 1926, eighteen bonds aggregating $18,000.00, drawing interest at the rate of 6% per annum from date, none of the principal of said bonds having yet matured, but interest coupons thereon having matured as follows: September 10th, 1929, $540.00; March 10th, 1930, $540.00; September 10th, 1930, $540.00; March 10th, 1931, $540.00; and September 10th, 1931, $540.00; making an aggregate of past due and delinquent interest by reason of the non-payment of interest coupons at dates of the maturity thereof of the sum of $2,700.00.

(d) Of the issue of September 10th, 1926, five bonds aggregating $5,000.00, drawing interest at the rate of 6% per annum from date, none of the principal of said bonds having yet matured, but interest coupons thereon having matured as follows: September 10th, 1929, $150.00; March 10th, 1930, $150.00; September 10th, 1930, $150.00; March 10th, 1931, $150.00; and September 10th, 1931, $150.00, making an aggregate of past due and delinquent interest by reason of the non-payment of interest coupons at dates of maturity thereof of the sum of $750.00.

(e) Of the issue of April 1st, 1926, two bonds aggregating $2,000.00, drawing interest at the rate of 6% per annum from date, none of the principal of said bonds having yet matured but interest coupons thereon having matured as follows: October 1st, 1929, $60.00; April 1st, 1930, $60.00; October 1st, 1930, $60.00; April 1st, 1931, $60.00, and October 1st, 1931, $60.00, making an aggregate of past due and delinquent interest by reason of the non-payment of interest coupons at dates of the maturity
72 thereof of the sum of $300.00.

(f) Of the issue of April 20th, 1923, twenty-five bonds, aggregating $25,000.00, drawing interest at the rate of 6% per annum from date, none of the principal

of said bonds having yet matured, but interest coupons thereon having matured as follows: October 20th, 1929, $750.00; April 20th, 1930, $750.00; October 20th, 1930, $750.00 and April 20th, 1931, $750.00, making an aggregate of past due and delinquent interest by reason of the non-payment of interest coupons at dates of the maturity thereof of the sum of $3,000.00.

5.

Intervener and its predecessor in title from whom it acquired said bonds and interest coupons in due course, and for value, became the owners thereof prior to the respective maturities thereof.

6.

This intervener refers to and adopts as its own and as a part hereof all the allegations of the Amended Original Petition of the plaintiffs in this cause so far as the same may be material and pertinent to the cause of action existing in behalf of this Intervener as hereinabove asserted and alleged.

Premises considered, Intervener prays that it have judgment against the defendant city for the amount of all past due interest coupons held and owned by this intervener; that it have judgment establishing the status of said bonds and bond issues and the validity of the same as valid outstanding obligations against said city.

Intervener prays for costs of suit, and for such other and further relief, general and special, to which in the premises it may be entitled.

McBRIDE, O'DONNELL & HAMILTON,
Attorneys for Intervener, Brotherhood of Locomotive Firemen and Enginemen.

Filed October 14th, 1931.

73 In the District Court of the United States of America Northern District of Texas Abilene Division.

Charles P. Bullard, et al, Plaintiffs,
vs. No. 1008 At Law.
City of Cisco, Texas, Defendant.

To the Honorable James C. Wilson, Judge of said Court:

Leave of the Court having been first had and obtained, now comes S. M. Berry, President, J. A. Phillips, Senior Vice President, and J. E. Rogers, General Secretary and Treasurer, Insurance Committee as Trustees, acting for and on behalf of the Mutual Benefit Department of the Order of Railway Conductors of America, a voluntary unincorporated association, and complaining of the defendant, City of Cisco Texas, files this petition of intervention, and for cause of action alleges:

I.

That S. M. Berry, J. A. Phillips, and J. E. Rogers are each citizens of the State of Iowa and are duly authorized and empowered to file and prosecute this petition of intervention in the capacity as hereinbefore alleged, and that the Order of Railway Conductors of America, a voluntary unincorporated association, has its headquarters and principal place of business at Cedar Rapids in the State of Iowa.

That the defendant, the City of Cisco Texas, is and at all times mentioned in this petition has been a municipal corporation, organized and existing under the general laws of the State of Texas, and has at all past dates hereinafter mentioned up to the present date been acting under a special charter, having its

situs in and being a citizen of Eastland County, Texas, which is within the Abilene Division of the District Court of the United States, for the Northern District of Texas.

That this is a suit between citizens of different states and the matter in controversy herein, exclusive of interest and costs, exceeds the sum of $3,000.00.

74 II.

That the bonds and interest coupons hereinafter set out and described as being held and owned by intervener, constitute, and are, a part of the same issue and or issues of bonds issued by the defendant, City of Cisco Texas on the dates alleged, and are a part of the same issue and/or issues of bonds issued by the defendant, City of Cisco Texas, which are held and owned by the plaintiffs as alleged and set out by plaintiffs in their Second Amended Original Petition filed in the above numbered and entitled cause.

III.

That the Order of Railway Conductors of America is now the owner and holder in due course, and for value, and prior to the maturities thereof, the various and sundry bonds and obligations and coupons issued by the City of Cisco on various and sundry dates, and more fully described and set out as follows, to-wit:

A. Bonds issued May 10, 1921, of the par value of $30,000.00, denominated City of Cisco Water Works extension funding bonds numbered consecutively from forty-six (46) to Sixty (60) inclusive, and from sixty one (61) to seventy-five (75) inclusive in denomination of $1,000.00, bearing interest at the rate of six per

cent per annum, payable on May 10th, and November 10th in each year, the principal of the bonds numbered 46 to 60 inclusive being due May 10, 1944, and the principal of the bonds numbered 61 to 75 inclusive being due May 10th, 1945.

B. Bonds issued by the City of Cisco Texas, the defendant, on April 20th, 1923, of the par value of $35,000.00, said bonds being denominated
75 City of Cisco funding bonds, series 1 to 1923, numbered consecutively from 181 to 195 inclusive, the principal of such bonds being due April 20th, 1955; and bonds numbered consecutively from 196 to 210 inclusive, the principal of which will be due April 20th, 1956, and bonds numbered consecutively from 211 to 215 inclusive, the principal of which will be due April 20, 1957, and each and every of said bond being in the denomination of ($1,000.00) One Thousand Dollars, and bearing interest from date at the rate of six per cent per annum, payable April 20th and October 20th in each year.

C. Bonds issued by the City of Cisco Texas on August 20, 1923, denominated City of Cisco Water Works Funding Bonds, series 1923, said bonds being of the par value of Twenty-Five Thousand ($25,000) Dollars, and being those bonds numbered consecutively from 111 to 115 inclusive, the principal of which will be due Feb. 20, 1955, and those bonds numbered consecutively from 141 to 150 inclusive, the principal of which will be due Feb. 20, 1958, and those bonds numbered consecutively from 151 to 160 inclusive, the principal of which will be due Feb. 20, 1959, each and every of which bond is in the denomination of $1,000.00, and bears interest at the rate of six per cent per annum, said interest being payable on the 20th day of February, and on the 20th day of August in each year.

IV.

That the time of the execution and issuance by the City of Cisco Texas of the various and sundry bonds now owned and held by the Order of Railway Conductors of America, as hereinbefore alleged, the City of Cisco Texas executed and issued coupons to evidence and represent the interest payment on each said respective bond as therein provided; that each and every of said principal bonds, and each and every of said interest coupon were in form and in
76 fact negotiable instruments due and payable to bearer; that each and every of said principal bond, and each and every of said interest coupon now owned and held by the Railway Conductors of America were duly executed by the Mayor, City Secretary and Treasurer of said City of Cisco Texas, being thereunto duly authorized in law by the Constitution of the State of Texas, and by the terms of the charter of said City. That prior to the sale by said City of any of said principal bonds or interest coupons thereon, the same were duly registered with the Comptroller of Public Accounts of the State of Texas, and approved as valid by the Attorney General of the State of Texas, and his certificate issued to that effect; that at the time of the authorization, and prior to the issuance or sale of said bonds, or interest coupons thereon, the City Commission of said city, as authorized and required by law, and the Constitution of the State of Texas, did levy a continuing direct annual ad valorem tax on all tax property in said city, sufficient to pay the interest on said bonds, and to create a sinking fund sufficient to redeem the principal of said bonds as same should mature.

That upon the issuance of the aforesaid bonds and interest coupons, after the registration and approval thereof as aforesaid, and prior to the respective matur-

ities thereof, all of said bonds, with the interest coupons thereto, were sold by said city for a consideration in each instance such as required by law, and the consideration, in cash, duly received therefor by said city and the proper officials thereof.

V.

That the Order of Railway Conductors of America became, and is now the owner and holder in due course, and for value before maturity thereof, of the interest coupons to the various and sundry bonds hereinbefore set out, and now owned by it; that the said Order of Railway Conductors of America is now the owner of the following described interest coupons which have matured and are now past due and unpaid, to-wit:

77 A. Past due interest coupons aggregating $3600.00, being due on those bonds issued on the 10th day of May, 1921, $900.00 of said interest coupons thereon having matured on each of the following dates, to-wit: November 10th, 1929, May 10th, 1930, November 10th, 1930, May 10th, 1931,

B. Past due interest coupons on the bonds issued April 20th, 1923, said interest coupons aggregating $5,250.00, and maturing and becoming due in the amount of $1050.00 on each of the following dates, to-wit: October 20th, 1929, April 20th, 1930, October 20, 1930; April 20th, 1931, October 20th, 1931,

C. On those bonds issued August 20th, 1923, past due interest coupons thereon aggregating $3,750.00, Seven Hundred Fifty Dollars ($750.00) thereof having matured on each of the following dates, to-wit: August 20th, 1929, February 20th, 1930, August 20th, 1930, and February 20th, 1931, and August 30th, 1931.

VI.

That the Order of Railway Conductors of America is now the owner and holder of bonds issued by the City of Cisco Texas, the total principal amount of which aggregate $90,000.00, and is the owner and holder of past due interest coupons on said bond aggregating $12,600.00. That past due interest coupons being unpaid, demand has been made on the City of Cisco Texas for the payment of said past due interest coupons; the payment of same has been refused.

Wherefore, Intervener prays that it have judgment for and on behalf of the Mutual Benefit Department of the Order of Railway Conductors of America against the defendant, City of Cisco Texas, for the amount of the past due and unpaid interest coupons held and owned by the Order of Railway Conductors
78 of America, as aforesaid, together with interest on said interest coupons from the dates of their respective maturities as provided therein, and in all respects establishing the status of said bonds and bond issues, and the validity of said bonds as valid outstanding obligations against said City of Cisco Texas, and that intervener be awarded such other relief, general or special, to which it may appear entitled, and it prays for costs of suit.

RAYMOND E. BUCK,
By J. H. TRICKEY,
RAYMOND E. BUCK,
Attorney for Intervener.

Filed October 30th, 1931.

79 (Title Omitted.)

Comes now United Mutual Life Insurance Company, a Life Insurance Corporation, incorporated and existing under and by virtue of the laws of the United States of America, and having its office and principal place of business in the City of Indianapolis, Indiana, and with leave of the Court first had and obtained, files this its Plea of Intervention, in the above numbered and entitled cause, and for cause of action against Defendant, City of Cisco, Texas, alleges the following:

I.

This Intervener is a resident and citizen of the State of Indiana. The Defendant, City of Cisco, is and at all times heretofore has been a municipal corporation, organized and existing under the General Laws of the State of Texas, and since July 28, 1919, has been incorporated and acting under a Home Rule Charter, as provided by Section 5, Article 11, Constitution of Texas, and the general statutes of the State enacted pursuant thereto. The Defendants, are residents and citizens of the County of Eastland, State of Texas, which is within the Abilene Division of the District Court of the United States, for the Northern District of Texas.

80 II

This is a suit between citizens of different States, it being a suit between a resident of the City of Indianapolis, State of Indiana, as plaintiff, Intervener, against the City of Cisco, Texas, J. T. Berry, of Cisco, Texas, being its Mayor, which is a citizen of the State of Texas, and has its place of residence in the Abilene Division of the District Court, of the United States, for

the Northern District of Texas, and the matter in controversy herein, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars ($3,000.00).

III.

(a) That heretofore, to-wit, on the 24th day of November, 1920, the defendant, City of Cisco, did issue and execute its bonds denominated "The City of Cisco Water Works Extension Funding Bonds, Series 1", in the aggregate sum of Three Hundred Thousand Dollars ($300,000.00), said bonds being numbered consecutively from One (1) to Three Hundred (300) inclusive, in denomination of One Thousand ($1,000.00) each, bearing interest at the rate of six per cent per annum payable May and November 24th, in each year, principal payable serially on November 24th in each of the years 1950 to 1960, inclusive.

(b) That heretofore, to-wit, on the 10th day of March, 1920, the defendant, City of Cisco, did issue and execute its bonds denominated "City of Cisco Water Works bonds", in the aggregate sum of Five Hundred Thousand ($500,000.00) Dollars, said bonds being numbered consecutively from One (1) to Five Hundred (500), inclusive, in denominations of One Thousand ($1,000.00) Dollars each, bearing interest at the rate of six per cent per annum, payable September 10th, and March 10th, in each year, principal payable serially on March 10th in each of the years 1923 to 1960, inclusive.

(c) That heretofore, to-wit, on the 10th day of May, 1925, the defendant City of Cisco did issue and execute its bonds denominated "City of Cisco Funding

Bond Series 1925", in the aggregate sum of
81 Three Hundred Thirty Four ($334,000.00)
Thousand Dollars, said bonds being numbered consecutively from One (1) to Three Hundred Thirty-four (334) inclusive, in denominations of One Thousand Dollars ($1,000.00) each, bearing interest at the rate of six per cent per annum, payable May 10 and November 10th in each year principal payable serially on May 10th in each of the years 1931 to 1965, inclusive.

(d) That heretofore, to-wit, on the 1st day of August, 1925, the defendant City of Cisco, issued and executed its bonds denominated "City of Cisco Funding Bonds, Series 2 of 1925, in the aggregate sum of One Hundred Thousand Dollars ($100,000.00), said bonds being numbered consecutively from One (1) to One Hundred (100) inclusive, in denominations of One Thousand ($1,000.00) Dollars each, bearing interest at the rate of six per cent per annum, payable February 1, and August 1, in each year, principal payable serially on August 1st, in each of the years 1946 to 1965, inclusive.

IV.

At the time of the issuance of said bonds hereinabove described, coupons were executed and attached to each of the said bonds by said City to evidence and represent the interest payment on said respective bonds as therein provided. Each and all of said principal bonds and each and all of said interest coupons were in form and in fact negotiable instruments, due and payable to bearer. That each and all of said principal bonds, and each and all of said interest coupons were duly executed by the Mayor, City Secretary and Treasurer of said City, who were duly authorized

under the laws and Constitution of the State of Texas, and by the terms of the City Charter of said City, so to execute the same.

82 That prior to the issuance or sale and delivery of any of said principal bonds or interest coupons thereon, the same were duly registered with the Comptroller of Public Accounts of the State of Texas, and approved as valid by the Attorney General of the State of Texas, whose certificate approving the same was duly issued at the time of the authorization and prior to the issuance of sale and delivery of said bonds and interest coupons thereon, and that prior to the registration and approval of the said bonds as aforesaid, and prior to their issuance or sale and delivery, the City Commission of said City as authorized and required by law and Constitution of the State of Texas, did levy a continuing direct, annual advalorem tax on all taxable property in said City of Cisco sufficient to pay the interest on said bonds and to create a sinking fund sufficient to redeem the principal of said bonds at maturity thereof.

That upon the issuance of said bonds or interest coupons, after the registration and approval thereof, as aforesaid, and prior to the respective maturities thereof, and also prior to the maturities of any one of the interest coupons hereinafter described as being past due, all of said bonds with the interest coupons attached thereto, were sold, or were issued and delivered by said City, and for which the City received full value and consideration; and that each of the said bonds, on the face thereof, contain recitals substantially as follows:

"And it is hereby Certified and Recited that provision has been made, as required by the Constitution

and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, Texas; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation."

And which said recitals, as made in each of said bonds, were voluntarily made by said City through its duly qualified public officers, who were authorized to make the same.

That said bonds with interest coupons owned by this intervener and being a part of said Water Works Extension Funding Bonds Series 1, dated November 24, 1920, as afore alleged, are as follows:

Number	Maturity Date	Amount
264	November 24, 1959	$1,000.00
275; 280 to 294, inclusive	November 24, 1960	$16,000.00

Said bonds aggregating $17,000.00 are not due, as appears from the above description thereof, but the interest coupons thereon are due and unpaid, as follows: Interest coupons due November 24, 1929, May 24, 1930, November 24, 1930 and May 24, 1931, are now at this time past due and unpaid, and altho and notwithstanding this intervener has repeatedly made demand of the defendant City and its officers

to pay the same, they have declined and refused to pay them, or any part thereof, and there is now due and owing this intervener on said past due interest coupons the sum of $2,040.00, being $510.00 due November 24, 1929, $510.00 due May 24, 1930, $510.00 due November 24, 1930, and $510.00 due May 24, 1931.

84 Intervener further represents to the Court that the said bonds and interest coupons owned by this intervener and being a part of said City of Cisco Water Works Bonds dated March 10, 1920, as above alleged, are as follows:

Number	Maturity Date	Amount
127-128	March 10, 1934	$2,000.00
139 to 141, Inc	March 10, 1935	3,000.00
142 to 146, Inc.	March 10, 1936	5,000.00

Said bonds aggregating $10,000.00 are not due as appears from the above description thereof, but the interest coupons thereon are due and unpaid as follows: Interest coupons due September 10, 1929, March 10, 1930, September 10, 1930, March 10, 1931, and September 10, 1931, are now at this time past due and unpaid, and although and notwithstanding this intervener has repeatedly made demand of the defendant City and its officers to pay the same, they have declined and refused to pay them, or any part thereof, and there is now due and owing this intervener on said past due interest coupons the sum of $1500.00, being $300.00 due September 10, 1929, $300.00 due March 10, 1930, $300.00 due September 10, 1930, $300.00 due March 10, 1931, and $300.00 due September 10, 1931.

This intervener further represents unto the Court that said bonds and interest coupons owned by this

intervener and being a part of the said City of Cisco Funding Bonds Series 1925, dated May 10, 1925, as above alleged, are as follows:

Number	Maturity Date	Amount
266 to 269, Inc.	May 10, 1960	$4,000.00
306 to 308, Inc.	May 10, 1963	$3,000.00
	May 10, 1964	3,000.00
330 to 333, Inc.	May 10, 1965	4,000.00

84 Said bonds aggregating $14,000.00 are not due, as appears from the above description thereof, but the interest coupons thereon are due and unpaid, as follows: Interest coupons, due November 10, 1929, May 10, 1930, November 10, 1930, and May 10, 1931, are now at this time past due and unpaid, and although and notwithstanding this intervener has repeatedly made demand of the defendant City and its officers to pay the same, they have declined and refused to pay them or any part thereof, and there is now due and owing this intervener on said past due interest coupons the sum of $1,680.00, being $420.00 due November 10, 1929, $420.00 due May 10, 1930, $420.00 due November 10, 1930 and $420.00 due May 10, 1931.

Intervener further represents unto the Court that of the issue known as "City of Cisco Funding Bonds, Series 2, 1925", dated August 1, 1925, this intervener owns bond No. 62, for the sum of $1,000.00, due August 1, 1958, and that said bond is not due, but the interest coupons thereon are due and unpaid, as follows: Interest coupons due August 1, 1929, February 1, 1930, August 1, 1930, February 1, 1931, and August 1, 1931, are now at this time past due and unpaid, and although and notwithstanding this intervener has repeatedly made demand of the defendant

City and its officers to pay the same, they have declined and refused to pay said coupons, or any part thereof, and that there is now due and owing this intervener on said past due interest coupons the sum of $150.00, being $30.00 due August 1, 1929, $30.00 due February 1, 1930, $30.00 due August 1, 1930, $30.00 due February 1, 1931, and $30.00 due August 1, 1931.

And this intervener further represents unto the Court that said bonds last herein above described and said unpaid coupons thereon, in due course, prior to the maturity thereof, and for a valuable consideration, were purchased by and became the property of this intervener, and intervener is now the owner and holder of the same.

85 Premises considered, intervener prays that it have judgment against the defendant City for the amount of all past due interest coupons held and owned by this intervener, as above alleged, and that it have judgment establishing the status of said bonds and declaring them valid as outstanding obligations against the said City of Cisco, and intervener prays for costs of suit and for such other and further relief, general and special to which in the premises it may be entitled.

RAYMOND E. BUCK,
J. H. TRICKEY;
W. P. DUMAS,

Attorneys for Intervener United Mutual Life Insurance Company.

Filed November 5th, 1931.

86 BILL OF EXCEPTIONS.

(Title Omitted.)

Be it remembered that on the trial of the above numbered and entitled cause, on the 12th day of November, 1931, the parties hereto, to sustain their respective contentions, offered in evidence.

The plaintiff introduced in evidence the following:

(a). Past due coupons on City of Cisco Water Works Bonds, dated March 10, 1920, aggregating $15,720.00, $390.00, thereof having matured March 10, 1929, $2,970.00 thereof having matured Sept. 10, 1929, and $3,090.00 thereof having matured on March 10, 1930, Sept. 10, 1930, March 10, 1931, and September 10, 1931, respectively, and also $2,000.00 of the principal of said bonds having matured March 10, 1930.

(b.) Past due interest coupons on City of Cisco Paving Funds Bonds, Series one, bearing date July 15, 1920 aggregating $4,650.00, $690.00 thereof having matured on July 15, 1929, $1,050.00 thereof having matured on January 15, 1930, and July 15, 1930, respectively, and $930.00 thereof having matured on January 15, 1931 and July 15, 1931, respectively; also $10,000 of the principal of said bonds which matured as follows: $5,000.00 on July 15, 1930, and $5,000.00 on July 15, 1931.

87 (c.) Past due interest coupons on City of Cisco Waterworks Extension Funding Bonds, Series 1, bearing date November 24, 1920, aggregating $7,920.00, $180.00 thereof having matured May 24, 1929, $1,800.00 thereof having matured on

November 24,1929, and $1,980.00 thereof having matured on May 24, 1930, November 24, 1930, and May 24, 1931, respectively.

(d.) Past due interest coupons on City of Cisco Waterworks Extension Funding Bonds, dated May 10, 1921, aggregating $30,900.00, $2,550.00 thereof having matured May 10, 1929, $6,480.00 thereof having matured November 10, 1929, and $7,290.00 thereof having matured on each of the dates May 10, 1930, November 10, 1930, and May 10, 1931.

(e.) Past due interest coupons on City of Cisco Waterworks Bonds, Series 2, dated January 15, 1922, aggregating $39,450.00, $90.00 thereof having matured on January 15, 1929, $7,500.00 thereof having matured on July 15, 1929; $7,830.00 thereof having matured on January 15, 1930, and $8,010.00 thereof having matured on each of the following dates: July 15, 1930, January 15, 1931, and July 15, 1931.

(f.) Past due interest coupons on City of Cisco Funding Bonds, series of 1922 dated June 1, 1922, aggregating $6,300.00 $1,020.00 thereof having matured June 1, 1929, and $1,320.00 thereof having matured on December 1, 1929, June 1, 1930, December 1, 1930, and June 1, 1931, respectively.

(g.) Past due interest coupons on City of Cisco Waterworks Funding Bonds, series of 1922, dated December 1, 1922, aggregating $13,050.00, $150.00 thereof having matured January 15, 1929, $2,340.00 thereof having matured July 15, 1929, and $2,640.00 thereof having matured January 15, 1930, July 15, 1930, January 15, 1931, and July 15, 1931, respectively.

(h.) Past due interest coupons on City of Cisco Funding Bonds, Series 1 of 1923, dated April 20, 1923, aggregating $16,230.00, $1,050.00 thereof having matured April 20, 1929, $3,660.00 thereof having matured October 20, 1929, and $3,840.00 thereof having matured on April 20, 1930, October 20, 1930, and April 20, 1931, respectively.

88 (i.) Past due interest coupons on City of Cisco Waterworks Funding Bonds, series 1923, dated August 20, 1923, aggregating $15,180.00, $60.00 thereof having matured February 20, 1929, $2,760.00 thereof having matured August 20, 1929, and $3,090.00 thereof having matured on February 20, 1930, August 20, 1930, February 20, 1931, and August 20, 1931, respectively.

(j.) Past due interest coupons on City of Cisco Funding Bonds, Series 1924, dated February 25, 1924, aggregating $17,610.00, $3,450.00 thereof having matured August 25, 1929, and $3,540.00 thereof having matured on February 25, 1930, August 25, 1930, February 25, 1931, and August 25, 1931, respectively.

(k.) Past due interest coupons on City of Cisco Funding Bonds, Series 2 of 1924, dated August 5, 1924, aggregating $24,990.00, $90.00 thereof having matured on February 5, 1929, $4,740.00 thereof having matured on August 5, 1929, and $5,040.00 thereof having matured on each of the following dates; February 5th and August 5th, 1930, and February 5th and August 5th, 1931.

(l.) Past due interest coupons on City of Cisco Funding Bonds, dated December 20, 1924, aggregating $1,650.00, $330.00 thereof having matured on each of the dates of June 20th and December 20th, 1929, June 20th and December 20th, 1930, and June 20th, 1931.

(m.) Past due interest coupons on City of Cisco Funding Bonds, Series 1925, dated May 10, 1925, aggregating $12,480.00, $510.00 thereof having matured on May 10, 1929, and $2,970.00 thereof having matured on November 10, 1929, and $3,000.00 thereof having matured on each of the dates of May 10th and November 10th, 1930, and May 10th, 1931.

89 (n.) Past due interest coupons on City of Cisco Funding Bonds, series 2 of 1925, dated August 1, 1925, aggregating $10,740.00, $30.00 thereof having matured on February 1, 1929, $2,070.00 thereof having matured on August 1, 1929, and $2,160.00 thereof having matured thereon on each of the dates of February 1st and August 1st, 1930, and February 1st and August 1st, 1931.

(o.) Past due interest coupons on City of Cisco Funding Bonds, series 1926, bearing date April 1, 1926, aggregating $21,270.00, $180.00 thereof having matured on each of the dates of October 1, 1927, and April 1 and October 1, 1928, $390.00 thereof having matured on April 1, 1929, $3,900.00 thereof having matured on October 1, 1929, and $4,110.00 having matured thereon on each of the dates of April 1, 1930, October 1, 1930, and April 1st and October 1st, 1931.

(p.) Past due interest coupons on City of Cisco Funding Bonds, Series 2 of 1926, dated September 10, 1926, aggregating $15,870.00, $3,000.00 thereof having matured on September 10th, 1929, $3,150.00 thereof having matured on March 10, 1930, and $3,240.00 having matured thereon on each of the dates of September 10th, 1930, and March 10th and September 10th, 1931.

(q.) Past due interest coupons on City of Cisco Waterworks Refunding Bonds, Series 1927, dated May

2, 1927, aggregating $11,730.00, $143.75 thereof having matured on November 2, 1928, $1,581.25 thereon having matured on May 2, 1929, $2,415.00 thereof having matured on November 2nd, 1929, and $2,530.00 thereof having matured thereon on each of the dates of May 2nd, 1930, November 2nd, 1930, and May 2, 1931.

(r.) Past due interest coupons on City of Cisco Refunding Bonds, Series of 1928, dated March 10, 1928, aggregating $15,895.00, $2,970.00 thereof having matured on September 10, 1929, $3,190.00 thereof having matured on March 10, 1930, and $3,245.00 thereof having matured on each of the dates September 10, 1930, March 10, 1931, and September 10, 1931.

90 (s.) Past due interest coupons on City of Cisco Refunding Bonds, Series 2 of 1928, dated November 15, 1928, aggregating $8,965.00, $2,860.00 thereof having matured November 15, 1929, and $2,035.00 having matured thereon on each of the dates of May 15, and November 15th, 1930, and May 15th, 1931.

(t.) Past due interest coupons on City of Cisco Sanitarium and Park Bonds, dated February 15, 1921, aggregating $1,675.00, $225.00 thereof having matured on August 15, 1929, $375.00 thereof having matured on February 15th, 1930, $375.00 thereof having matured on February 15, 1931, and $325.00 thereof on August 15th, 1931, also $2,000.00 of the principal of said bonds, having matured February 15, 1931.

(u.) Past due interest on City of Cisco Waterworks Bonds, dated May 10, 1902, aggregating $1,000.00, $250.00 thereof having matured thereon on each of the dates of January 1, 1930, July 1, 1930, January 1, 1931, and July 1, 1931.

The total amount of past due interest coupons on said bonds introduced by plaintiffs was $355,787.50,

and the total amount of past due bonds introduced by the plaintiffs was $14,000.00, making an aggregate amount of past due bonds and past due interest coupons on said bonds $369,787.50.

A copy of one of each series of bonds and coupons, the respective portions of which, as above indicated, were introduced in evidence by the plaintiffs, is by agreement of counsel, attached hereto and they are numbered respectively (a) to (u) inclusive, for purposes of identification.

The plaintiffs also introduced in evidence twenty-one certified copies of opinions of the Attorney General of Texas relating to and approving as valid, each of said above described bonds.

Plaintiffs also introduced in evidence twenty-one certified copies of transcripts of proceedings by the City of Cisco relating to said bonds, to which transcripts of proceedings the above mentioned
91 respective copies of the opinions of the Attorney General of Texas related and referred to in approving said bonds.

The plaintiffs also introduced in evidence the following affidavit of Charles P. Bullard:

In the District Court of the United States for the Northern District of Texas, Abilene Division.

Charles P. Bullard, et al, Plaintiffs.
vs. No. 1008, At Law.
City of Cisco, Texas, et al, Defendants.

State of New York,
County of New York.

Charles P. Bullard, a plaintiff in the above numbered and entitled cause, first being duly sworn made oath as follows:

First.

That he, John R. Brandon, Henry E. Poor and Robert D. White are the holders of all the bonds of the City of Cisco described in the petition of the plaintiffs in this cause.

Second.

That each and all of said bonds, which are payable to bearer, were transferred to the plaintiff by actual delivery thereof, and are now on deposit in the Liberty National Bank & Trust Company of New York, being there held in the name of, for and subject to the control dominion and disposition of the plaintiffs.

92 Third.

That no bond owned by any citizen of Texas was transferred to the plaintiffs, and the plaintiffs hold no bonds transferred by any citizen of Texas, but that all of the bonds transferred and delivered to the plaintiffs were delivered by owners who resided in states other than the State of Texas.

Fourth.

That there were heretofore transferred and delivered to these plaintiffs, among the bonds and coupons sued upon, bonds upon which matured and past due coupons exceeded $3,000.00, as follows:

(a) From George G. Averill, Waterville, Maine, bonds were transferred upon which the past due coupons aggregate $5,403.75;

(b.) From The Title & Guaranty Trust Company, Cincinnati, Ohio, bonds were transferred upon which the past due coupons aggregate $3,120.00; and

(c.) From E. Schier Welsh, Boston, Massachusetts, bonds were transferred upon which the past due coupons aggregate $5,590.00

Fifth.

That all of the bonds sued upon and described in plaintiffs' petition were delivered to plaintiffs by the respective holders prior to the filing of the above numbered and entitled suit, and have continued since the filing of said suit in the hands of the plaintiffs, and subject to the exclusive control, dominion and ownership of plaintiffs under the terms of the agreement dated January 3, 1930, in which the plaintiffs, as the owners and holders of said bonds and coupons, it was agreed, should demand, collect and receive all moneys due or payable on said bonds and coupons, and under which agreement the full title to all the bonds and coupons sued upon was transferred and delivered to the plaintiffs, with full and complete ownership.

(Signed) CHARLES P. BULLARD.

Subscribed and sworn to before me, the undersigned authority in and for the County of New York, State of New York, by the said Charles P. Bullard, this 22nd day of September, 1930.

(Signed) HORACE H. SEARS,
Notary Public, County of New York, State of New York.

93 The plaintiffs introduced in evidence paragraph 13 of the sworn answer of the City of Cisco in cause No. 782, in Equity, styled C. P. Bullard, et al. vs. City of Cisco, et al, as follows:

"The defendants admit that after the issuance of the aforesaid bonds and interest coupons, and after the registration and approval thereof the bonds and interest coupons were sold by the City for a consideration, and the consideration was duly received therefor by the City and the proper officials thereof."

94 Exhibit "X"— Bondholders Agreement, Dated 1/3/30, omitted from the printed record, being heretofore copied at page 21.

* * * * * * * *

95 The defendant introduced in evidence by agreement between the parties certain parts of the deposition of Charles P. Bullard, taken in equity cause No. 782, styled Charles P. Bullard, et al, vs. City of Cisco, as follows:

"Interrogatory No. 4: Did the plaintiffs acquire the title to the bonds described in their bill of complaint under some kind of agreement or contract?"

Answer: "Yes".

Interrogatory No. 5: "Please attach to this set of depositions and have the officer taking the interrogatories to properly identify same, any agreement entered into between plaintiffs and the person from whom they acquired titles to the bonds described in plaintiffs' bill of complaint."

Answer: "I hand you a copy of the bondholders agreement dated January 3rd, 1930". (Copy of printed agreement marked and attached).

Interrogatory No. 19: "The plaintiffs allege in their bill of complaint the following:

'That plaintiffs or those whose titles they have acquired said bonds and interest coupons in due course and for value prior to the maturity thereof'.

Please give the names of the persons, firms or corporations from whom the transferrors of the titles of the bonds to the plaintiffs acquired said bonds, the dates they acquired them, the amounts acquired, and the sums of money paid therefor."

Answer: "I have no knowledge of these facts."

Interrogatory No. 6: "Did the plaintiffs write any letters to any of the persons, firms or corporations from whom you acquired title to the bonds described in plaintiffs' bill of complaint, requesting that they sign a contract and deliver the titles to the plaintiffs to the bonds they hold?"

96 Answer: "Yes".

Interrogatory No. 7: "If you state that the plaintiffs did write letters to the owners of the bonds asking that they deliver the titles to plaintiffs, please attach to these interrogatories all the letters written by the plaintiffs, and have the officer taking these depositions to properly identify such letters attached."

Answer: "I hand you two printed letters." (Letters received and marked exhibits 2 and 2A)

Upon the conclusion of the above and foregoing evidence, the Court entered the judgment hereinabove set forth on page .... hereof, on the .... day of November, 1931, dismissing plaintiff's suit for lack of jurisdiction.

To the action of the Court in entering said judgment the plaintiffs then and there in open Court duly ex-

cepted, and tender this their bill of exceptions and pray that the same be approved by the Court and duly ordered filed as a part of the record in this case.

CALDWELL & RAYMOND,
DEXTER HAMILTON,
McBRIDE, O'DONNELL & HAMILTON,
(Signed) By DEXTER HAMILTON,
Attorneys for Plaintiffs.

Agreed to by the defendant this the .... day of January, 1932.

(Signed) J. J. BUTTS,
Of BUTTS & WRIGHT,
Attorneys for Defendant.

Filed January 30th, 1932.

This bill of exceptions examined, approved and ordered filed as a part of the record in this cause, this the 28 day of January, 1932.

(Signed) JAMES C. WILSON,
Judge.

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97 (Title Omitted.)

On this the 12th day of November, 1931, came on to be heard and considered the above numbered and entitled cause, wherein Chas. P. Bullard, John R. Brandon, Henry E. Poor, and Robert D. White are plaintiffs, the Reserve Loan Life Insurance Company, a life insurance corporation, the Brotherhood of Locomotive Firemen and Enginemen, a corporation, the Railway Conductors of America, a corporation, and United Mutual Life Insurance Co., a corporation, are

interveners, and the City of Cisco, Texas, a municipal corporation, J. T. Mayor as Mayor of said City of Cisco, J. R. Burnett, W. J. Donovan, Geo. D. Fee, J. T. Elliott, and Joe Clements, as Commissioners of said City of Cisco, and J. B. Cate, Secretary of said City of Cisco, are defendants, and came on to be heard and considered the exception of the defendants to the pleas of intervention and the exceptions of the defendants to plaintiffs' amended original petition last filed herein, and the Court after having heard and considered said exceptions is of the opinion that all exceptions should be overruled except Exception No. 2, wherein the defendants except to that part of plaintiffs' amended petition herein which seeks equitable relief by having the validity of certain bonds and coupons established by a decree of this Court, and this exception was sustained by the Court; and the defendants duly excepted to the action of the Court in overruling all of their exceptions to the pleas of intervention and the exceptions to plaintiffs' amended petition; and there came on to be heard and considered the exceptions of the plaintiffs as set out in their supplemental petition, and the Court,
98 after hearing and considering said exceptions, sustained said exceptions, to which action of the Court in sustaining said exceptions, the defendants duly excepted, whereupon all parties announced ready for trial; a jury was expressly waived by all parties by written stipulation entered of record in this cause, and all matters of fact as well as of law submitted to the Court.

The Court, after having heard the pleadings read, the evidence introduced, and the argument of counsel, is of the opinion that this Court does not have jurisdiction to hear and determine this cause, and that the same should be dismissed because of want of jurisdiction.

It is therefore ordered, adjudged and decreed that this cause be, and the same is hereby, dismissed for lack of jurisdiction and without prejudice, at plaintiffs' cost, except that all costs incurred by the respective interveners herein be adjudged against them, and that execution issue against plaintiffs and interveners for all costs herein incurred, and for all of which let execution issue.

Plaintiffs and each intervener duly excepted to the Court's action in dismissing this cause and gave notice of appeal to the Circuit Court of Appeals of the United States for the 5th Circuit, at Fort Worth, Texas.

JAMES C. WILSON,
Judge.

Filed November 18th, 1931.

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99 PLAINTIFFS' NOTICE OF APPEAL.

(Title Omitted.)

To Messrs. Butts & Wright, Attorneys of Record for the City of Cisco, Defendant:

You will take notice that plaintiffs, Chas. P. Bullard, John R. Brandon, Henry F. Poor and Robert D. White, in the above numbered and entitled cause, at Law, pending in the District Court of the United States for the Northern District of Texas, Abilene Division, appeal to the Circuit Court of Appeals for the Fifth Circuit, from the judgment and order of the Court entered in said cause on the 12th day of November, 1931, dismissing the suit filed by the plain-

tiffs upon the ground that the United States District Court has no jurisdiction in said cause.

CALDWELL & RAYMOND,
McBRIDE, O'DONNELL &
HAMILTON,
By DEXTER HAMILTON,
Of Counsel,
Attorneys of record for plaintiffs, Chas. P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White.

Filed December 22nd, 1931.

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100 (Title Omitted.)

The plaintiffs in this suit, Charles P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White, in connection with their appeal, make the following assignments of error committed upon the trial of this cause, and which are fundamental errors apparent upon the fact of the record, to-wit:

First Assignment of Error.

The plaintiffs' Petition alleging, and the record conclusively showing without contradiction, that the United States District Court has jurisdiction of both the parties and the subject matter of the case, the order and judgment of dismissal for want of jurisdiction is fundamental error.

Second Assignment of Error.

There being no proof that the title to the bonds sued upon by the plaintiffs was reposed in them for the

purpose of creating jurisdiction, where none existed in the assignors, the order of dismissal was fundamental error, since it was based solely upon the proposition that plaintiffs acquired title from the assignors to create federal jurisdiction as to the amount in controversy.

Third Assignment of Error.

The bonds and coupons sued upon being negotiable instruments, payable to bearer, in the hands of the plaintiffs under previous delivery to them, and there being no evidence in the record that they were transferred to plaintiffs for the sole purpose of creating federal jurisdiction, the judgment of the Court dismissing the cause for want of jurisdiction is fundamentally erroneous.

CALDWELL & RAYMOND,
McBRIDE, O'DONNELL &
HAMILTON,
Attorneys for Plaintiffs.

Filed January 4th, 1932.

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101 (Title Omitted.)

Know all men by these presents: That Chas. P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White, plaintiffs in the above numbered and entitled cause, as Principals, and Dallas Title & Guaranty Company, a surety company organized and existing under the laws of the State of Texas, and authorized to do business in Texas, as Surety, hereby acknowledge themselves to owe and to be bound to pay to the City of Cisco, Texas, defendant in the above numbered and entitled cause, the sum of Three Hundred & No/100 Dollars ($300.00), conditioned

that the above bound Chas. P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White, who are appealing from the judgment of the Court in the above numbered and entitled cause, rendered on November 12th, 1931, dismissing this suit and adjudging the United States District Court for the Northern District of Texas to be without jurisdiction of said cause, shall prosecute their appeal to effect and answer all costs if they fail to make such appeal good.

Witness the signatures of said parties and their surety, this the 21st day of December, 1931.

CHAS. P. BULLARD,
JOHN R. BRANDON,
HENRY E. POOR, and
ROBERT D. WHITE,
By CALDWELL & RAYMOND,
McBRIDE, O'DONNELL &
HAMILTON,
By DEXTER HAMILTON,
(Seal) Of Counsel. Their Attorneys
of Record, Principals
DALLAS TITLE & GUARANTY COMPANY,
By C. L. ALLEN,
Vice-President. Surety.

Attest:

S. C. WHITELERY,
Asst. Secretary.

Approved, this December ...., 1931.

JAMES C. WILSON,
Judge, U. S. District Court,
Northern District of Texas.

Filed January 12th, 1932.

To the Clerk of said Court:

In the above entitled and numbered cause, the plaintiffs, Charles P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White, are appealing from the judgment rendered against them in favor of the City of Cisco, Texas, dismissing the above entitled and numbered cause for want of jurisdiction, and it is agreed by the undersigned attorneys of record for the respective parties plaintiffs and defendant, that the issuance of praecipe by the appealing parties is waived, and that the record for the Circuit Court of Appeals in this case shall be constituted and made up of the following instruments, to-wit:

1. Style and caption.

2. Plaintiffs' Second Amended Original Petition.

3. Defendant's amended answer.

4. Insertion in the record of a copy of one of the bonds of each series sued upon by plaintiffs, together with a statement as shown by the record of the total amount of bonds and coupons sued upon by appellants.

4. (a.) Every plea of intervention filed by the respective interveners.

5. All other evidence offered by the plaintiffs.

6. All other evidence offered by the defendant.

7. Judgment of the Court.

8. Notice of Appeal.

9. Waiver of service of notice of appeal.

10. Assignments of error.

103 11. Appeal Bond and approval thereof.

12. Stipulation for preparation of record.

13. Clerk's Certificate.

CALDWELL & RAYMOND,
McBRIDE, O'DONNELL &
HAMILTON,
By DEXTER HAMILTON,
Attorneys of record for Charles P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White, Plaintiffs.

BUTTS & WRIGHT,
By F. D. WRIGHT,
Attorneys of record for City of Cisco, Texas.

Filed January 4th, 1932.

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104 OPINION.

(Title Omitted.)

On the face of the pleadings I overruled the defendant's plea to the jurisdiction of the Court to entertain this suit, based as it was on the ground that the plaintiffs were not the owners but merely the holders of the bonds and coupons, for collection,—that they were not the owners of them,—for the reason there appears in plaintiff's petition this allegation: "Plaintiffs are the owners of and hold title to various and sundry of said bonds and interest-coupons there-

on including the following," then follows a list of the bonds and coupons actually sued upon.

Now, after the record has been made in the case, the defendants again raise the question of jurisdiction. The Court I think is in a better situation now, in the light of the record, to determine the question as to whether that allegation of ownership by plaintiffs of these bonds and coupons has been sustained.

Of course, under all of the authorities, it would not make any difference for what purpose the transfers were made, even though it was to give jurisdiction to the Federal Court in this matter and to confer the right upon the plaintiffs to sue in the Federal Court in behalf of all of these bondholders, if the result of such transfer was that they became actually the owners of the bonds and coupons; that is the effect of the Supreme Court decisions as well as the ruling of the Fifth Circuit in the case of Rojas-Adam Corporation versus Young, 13 Federal, (2nd) 989, in the decision by Judge Foster, where he said: "It is also
105 well settled that persons may transfer property to another for the purpose of giving jurisdiction to the Federal Court providing the change in ownership is bonafide. In such cases the Court will not inquire as to the motive of the transferring party." To the same effect is the Black & White Taxicab Co. versus the Yellowcab Co., which has been cited here by the defendant.

There is no question if plaintiffs were present here, as owners of the bonds and coupons now offered in evidence, under the state of the record in this case, it would not make any difference what the purpose might have been, being the owners of them they could avail themselves of this Court and sue and enforce collection upon them.

To determine the question of ownership, the Court would necessarily have to determine the effect of this

agreement, called the Bondholders Protective Agreement, dated January 3, 1930, which defined the powers of these plaintiffs who are styled in that agreement as the "Bondholders Protective Committee", and the Court, in deciding the effect of that very voluminous "agreement", as it is called, would have to determine that effect from looking at the contract,—to use a common phrase, from its four corners,—and looking at it in that light. I think it is evident here that the ownership of these bonds and coupons doesn't appear to have changed by reason of such agreement; that the real parties in interest here are not the plaintiffs, the Bondholders' Protective Committee, but the various owners of these bonds. Who they are the record does not disclose unless possibly by an affidavit of the plaintiff Bullard as to three of such owners. This simply appears to be a case where four men who were not the owners of any of these bonds, sensed the situation, evidently learned of the failure of the City of Cisco to make payments of coupons due in 1929, and,

105 being enterprising, and desiring the job of handling all of these bonds and coupons, and having the ultimate purpose of collecting them, set themselves up and styled themselves as a Bondholders' Protective Committee, prepared this instrument,—not making the contract with anyone at the time but nevertheless preparing it themselves,—which was to become a contract as between them and any of these bondholders in the event such bondholders should turn over their bonds and coupons to them, providing for a depositary of the bonds, and going at great length into a description of the powers and authority of the Committee.

The First paragraph of the agreement is:

"An Agreement, made and executed as of the Third day of January, A. D. 1930, between John R. Brandon,

Charles P. Bullard, Robert D. White, and Henry E. Poor, and such other persons, if any, as may hereafter be joined with them as members of the Committee (hereinafter sometimes called the "Committee"), parties of the first part, and such holders of bonds of the city of Cisco, Texas, and/or coupons for interest thereon as may become parties to this agreement in the manner herein provided, (hereinafter sometimes called "Depositors"), parties of the second part, and

Whereas said City of Cisco has failed to pay certain interest and principal payments due during the year 1929 on its Bonds; and

Whereas it is desirable that the holders of the Bonds and Coupons should unite and organize for the protection of their interests etc."

Now, the Court is not required to give literal effect to all of the words used in this contract if, on the whole, it clearly appears that it was not the intention of the parties that they were to have such effect. The seventh paragraph, and part of eight, may be treated as an example I suppose of the limit of authority you might say under the literal words that was given to the Bondholders' Committee. The seventh reads: "Every depositor, for himself and not for any other, hereby sells, assigns, transfers and delivers to the Committee, its successors and assigns, each and every bond and coupon deposited hereunder by him, and also all his right, title, interest, property and claim at law or in equity by virtue of said Bonds and Coupons
107 or any instrument securing the same, in and to the property and assets of the City, whether or not mortgaged to secure said Bonds and Coupons or otherwise, and any and all his claims against the City or any receiver or receivers thereof, or under any receivership of the City, or of any of its property, to

the end that the Committee, as from time to time constituted, shall be vested with the full legal title to all the Bonds and Coupons deposited hereunder, and to each and every claim based thereon. Each Depositor hereby covenants and agrees that he will at any time on the request of the Committee promptly execute and deliver any assignments, powers of attorney, or other instruments which the Committee may deem necessary or proper, effectually to vest full and complete ownership in the Committee of said deposited Bonds and Coupons as aforesaid.

Eighth: "The Committee may, as the owner and holder of the deposited bonds and coupons, demand, collect and receive all money due or payable thereon and may take or cause to be taken, or participate in, or settle, compromise or discontinue any actions or proceedings for the collection of any of the bonds or coupons or the protection, enforcement or foreclosure of any legal or equitable lien securing or pertaining to same, including liens arising from the enforcement of taxes, levies and assessments dedicated, levied or available for the service of the bonds, or for the appointment of a receiver of the city for any purpose whatsoever."

Of course it appears from the reading of those words that the nature of the ownership and title in the plaintiffs to all of those bonds and coupons could not, by the use of the English language, be made more absolute, but, after all, the conclusion cannot be escaped that these four gentlemen were not made practically three million dollars richer by this instrument; that each one of them, by virtue of this instrument, did not thereby become the owner of the property on its face, aggregating in value to each of these men approximately five hundred thousand or more dollars, but that the real ownership of all these bonds remained with the transferrers.

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This instrument which in the first place recites no consideration whatsoever except "service", can ultimately mean only the collection of these bonds. No cash consideration is recited. It goes on and recites that if after these bonds are deposited that any final plan reached by the committee on being submitted to the bondholders if not approved by as many as two-thirds of them, then the plan will not be carried out; that in the event it is approved by two-thirds, then the one-third who do not approve will have their bonds returned to them; also that it is to run for a period of five years and if nothing is accomplished or whatever is accomplished that at the end of five years' the remaining bonds are to be retransferred to the transferers, unless a new plan is formed. It also provides for the payment of fees, the purpose of this committee of course being to earn the fees, in the event of the collection of the bonds—the specific fees not being designated any further than that they were to be reasonable fees and the reasonableness of same to be determined by the Committee,—and, after the payment of such fees and expenses, as were necessary, the matter of necessity to be determined by the Committee, then any remaining amounts were to be paid over to these transferrors. It is like instruments that we not infrequently come in contact with, they may be, in their words, ever so absolute, yet, as between
109 the parties the instrument may be an entirely different thing from what it is described to be, in words, depending upon the true purposes of the instrument itself. That is applicable to the situation here. It was not the intention of the parties that these people, the Committee, should actually own. The most that could be said as to the effect of it would be that they held an equitable title or rather that they hold this property in trust.

The real effect of this instrument with respect to ownership, though the paragraph in which it is ex-

pressed comes early in the contract and there are others coming later that contradict it, nevertheless I think it expresses the real truth about this business is found in the sixth paragraph; if I understand it, providing that even after these bonds are delivered, in the event a holder of such bonds who had already deposited them with the Committee should make up his mind for any reason to transfer his bonds to some other person, to trade them, to sell them, the contract provides that each of the bondholders (referred to as a Depositor in the contract) when he makes deposit of his bonds, should receive a certificate. This sixth paragraph deals with his right to transfer that certificate and the right of the transferee of such certificate of deposit to have re-issued to him from the Depositary a certificate which will be evidence, as I view it, of his absolute ownership of the bond. It says "Each depositor of bonds and/or coupons shall receive under and subject to the terms and conditions of this agreement a certificate of deposit signed by the Depositary or agency receiving the same in such form as shall be prescribed by the Committee and transferable only upon the books of the Depositary issuing such certificate. The transferee of any such certificate of deposit duly indorsed by the Depositor and properly witnessed shall, upon surrender of the same to the Depositary issuing such certificate, receive a new certificate of deposit for the same amount of bonds and/or coupons in the name of such transferee or his nominee, who shall thereafter be deemed a Depositor and shall thereafter be entitled to the same rights and privileges and subject in every way to this agreement as fully as the original Depositor. The registered holder for the time being of any certificate of deposit shall be deemed for all purposes to be the absolute owner thereof and the bonds and/or coupons therein referred to and neither the Depositary nor the Committee, shall be affected by any notice to the contrary."

Now, as I said, that paragraph or that part of the sixth paragraph which I have read, within itself, taken as a whole, is a wonderfully strong circumstance that points more unerringly than all the balance of this strong language about transfers to the Committee and ownership by the Committee as to what the real truth was, who were the real owners and the real parties in interest, even leaving off the declaration that any such transferees of such certificates of deposit, after going through all the requisites here specified, should be for all purposes regarded as the absolute owners thereof. So, as far as ownership is concerned, as heretofore said, it appears on the face of the contract, considering it as a whole, and self-evident to my mind that there is no ownership in this Committee. In other words, if taxes were to be paid on these bonds, though they might be paid by this Committee as an agent, the money of course would be out of these real owners or if they should be destroyed by fire or stolen they would not be a loss to this Committee; the loss would be that of the real owners. My conclusion is that this Committee, after all, did not have itself designated as anything in truth more than a collection agency; that is what it was.

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A great many things have been pointed out under this agreement which this Committee could do and doubtless there were a great many things it had a right to do, but as far as this record is concerned, we see them trying to do but one thing and that is to collect these bonds. There is no record here of their ever having done anything else. I cannot conceive of a purpose that any owner of a note or a bond could have, especially of a city's securities, where it failed to meet its obligations, in placing that bond in the hands of attorneys or agents, other than the collection of them. The fact that the agency or attorney might be allowed some latitude as to the means by which

he could effect that ultimate end would not alter the character of the instrument nor could it change the purpose of the instrument, and, I think, on the whole, it may be said from this that the sole purpose of the Depositors was to constitute this Committee a collection agency; whether they did this by compromise or by trading them off for property or by suit cannot make any difference. The means contemplated to accomplish an end cannot be said to be the purpose of an instrument but the real purpose is the ultimate thing it had in view and in that light I would say this Committee is nothing more, when you strip the agreement of meaningless verbage and come down to its essence, than that of a Collection Committee,—a self-constituted Collection Committee or Agency.

And now we have the other question presented in this allegation of the petition, which was that plaintiffs "hold title to various and sundry of said bonds and the interest-coupons thereof". As I said, the effect of the instrument might be that they held in trust the title. That is the most that could be said about it. Relegated to that position, being holders for collection, I think there is not much dispute between the attorneys as to what the law is in this case.

112 Each has presented his views with respect to the law. The opposite side says, "Yes, that's the law but these decisions are not all applicable to this case." I think in a situation such as I hold the facts to be here the law is well settled. Though it is an old case, Farmington vs. Pillsbury, in the 114th U. S., by Chief Justice Waite, settles this question. As far as I know no later decision has departed from the rule there laid down, it disposing of the very question which we have here:

"Upon the question of transfer it was uniformly held that, if the transaction was real and actually con-

veyed to the assignee or grantee all the title and interest of the assignor or grantor in the thing assigned or granted, it was a matter of no importance that the assignee or grantee could sue in the Courts of the United States when his assignor or grantor could not. A suit by such an assignee or grantee would present, in reality, a controversy between the plaintiff on the record and the defendants. But it is equally well settled that if the transfer was fictitious, the assignor or grantor continuing to be the real party in interest, and the plaintiff on record but a nominal or colorable party, his name being used only for the purpose of jurisdiction, the suit would be essentially a controversy between the assignor or grantor and the defendant, notwithstanding the formal assignment or conveyance, and that the jurisdiction of the Court would be determined by their citizenship rather than that of the nominal plaintiff."

As I view the facts, that is the exact situation we have in this case. And, further, in the same opinion, the Court said:

"We are clearly of the opinion that this case falls within the prohibitions of the statute. The bonds to which the coupons now in suit were attached were all bought as early as 1871 or 1872 by citizens of the State of Maine, who held and owned the bonds themselves when this suit was brought. Their purchases were made while a suit was pending in the Courts of the State to test the validity of the bonds. On the 27th of August, 1878, the highest Court of the State decided in effect that the bonds were inoperative and void, for want of power in the village corporation to issue them. Almost two years after this decision these coupons, to the amount of $7,922.00, were collected from various holders of bonds, all residents of the village of Farmington and citizens of Maine, and

113 transferred, separate from the bonds, to the present plaintiff, a citizen of Massachusetts, under an arrangement by which the plaintiff gave to the agent of the holders of the coupons his non-negotiable promissory note for $500.00, payable in two years from date, with interest and agreed, "as a further consideration for said coupons," that if he succeeded in collecting the full amount thereof he would pay the agent, as soon as the money was got from the corporation, fifty percent of the net amount collected above the $500.00. This suit, begun July 1, 1880, in the name of the plaintiff, is the result of that arrangement. It is a suit for the benefit of the owners of the bonds. They are to receive from plaintiff one-half of the net proceeds of the case they have created by their transfer of the coupons gathered together for that purpose."

It makes no difference that some features of the cases are different; the amount involved in the case I am reading from was $500.00, which was held by the Court to be no real consideration. In this case the amount is indefinite. Those things make no difference, as I view it the two cases are the same. Then the opinion continues:

"The suit is their own in reality, though they have agreed that the plaintiff may retain one-half of what he collects for the use of his name and his trouble in collecting. It is true the transaction is called a 'purchase' in the papers that were executed, and that the plaintiff gave his note for $500.00 but the time for the payment was put off for two years, when it was, no doubt, supposed the result of the suit would be known. No money was paid, and as the note was not negotiable, it is clear the parties intended to keep the control of the whole matter in their own hands, so that if the plaintiff failed to recover the money he could be released from his promise to pay."

The fact that in that case the paper was not negotiable and in this case negotiable makes no difference. The non-negotiability of the paper was referred to as a circumstance. There "no money was paid" and this is cited also as a circumstance bearing on the intention of the parties. Continuing:

"No money was paid, and as the note was not negotiable, it is clear that the parties intended to keep the control of the whole matter in their own hands so that if the plaintiff filed to recover the money he could be released from his promise to pay. In the language of Mr. Justice Field, speaking for the Court in Detroit v. Dean, 106 U. S. 537, 541, applied to the facts of this case, the transfer of the coupons was 'a mere contrivance, a pretense, the result of a collusive
114 arrangement to create' in favor of this plaintiff 'a fictitious ground of federal jurisdiction,' so as to get a re-examination in that jurisdiction of the question decided adversely to the owners of the coupons by the highest judicial tribunal of the State."

It makes no difference about the details of fact, the extreme facts that produce such agreement in one case and not such extreme facts as are here shown produced it in another; it is the same in effect. That instrument and this one here in this case are to the same effect. I would not say the specific purpose was to create federal jurisdiction. There is no record here, if I am correct in this conclusion, showing affirmatively any jurisdiction in this Court. That was probably in mind. The record discloses nothing this committee did except to sue in a federal Court to enforce collection.

I assume that the majority of those who own these bonds and who are the real parties in interest in this suit are unknown; we do not know their names. There may be hundreds of them for all we know.

The only ones we do know are known by means of an affida-..... which, by agreement between counsel as I understand it, has become evidence in this record. This affidavit is made by one of these plaintiffs, Charles P. Bullard, who states: "There were heretofore transferred to these plaintiffs, among the bonds and coupons sued upon, bonds exceeding three thousand dollars as follows:" Then he names the four bondholders whose holdings each exceed three thousand.

Now it appears that these transferrors, because of residence, could have maintained the suit. Even if the Court should hold that under this kind of an arrangement the persons named in the affidavit could maintain the suit, it is evident that all the balance of these claims must be dismissed. Under the state of the record, if they are to be dismissed all must be dismissed because the claims of these parties are not separated, not segregated in the evidence in any way; they cannot be identified. In view of the whole situation, it is my conclusion that this case in its entirety should be dismissed.

115

Now, gentlemen, counsel have worked on this matter for months and the Court has only gone into it at this time hurriedly. I may be mistaken about it. I am certain if I am that I should like to be enlightened, but your briefs have been very brief. If you care to submit exhaustive briefs on it, I would be very glad to have them but that is the view I take of the matter at this time. Of course that ruling includes the Interveners also.

JAMES C. WILSON, Judge.

116 I, GEORGE W. PARKER, Clerk of the District Court of the United States for the Northern District of Texas, hereby certify that the above and foregoing is a true and complete copy of the original papers on file and of record in cause No. 1008 At Law, entitled Charles P. Bullard, et al., versus City of Cisco, Texas, et al., as per praecipe filed by counsel in this cause, except that the original Waiver of Service of Notice of Appeal is included herein instead of copy thereof, also original order of Court concerning exhibits.

Witness the seal of said District Court, and the name of the Clerk thereof, at Abilene, this the 3rd day of February, A. D. 1932.

GEORGE W. PARKER,
(Seal) Clerk,
By IDA M. JAMES, Deputy.

Original Waiver of Notice of Appeal omitted from the printed record, the original thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * * * * *

Minute entry of submission, November 15, 1932, omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 6511

CHARLES P. BULLARD et al., Appellants,

versus

CITY OF CISCO, TEXAS, Appellee

Appeal from the District Court of the United States for the Northern District of Texas

(December 21, 1932)

Before Bryan, Sibley and Walker, Circuit Judges

OPINION OF THE COURT—Filed December 21, 1932

WALKER, Circuit Judge:

This was an action by the appellants, four individuals, three of whom are citizens of New York, and one a citizen of Ohio, against the appellee, a Texas municipal corporation, to recover the amounts of past due bonds made by appellee, and of past due interest coupons from such bonds, both the bonds and the coupons being payable to bearer, with interest on amounts of such bonds and coupons. Appellants' petition alleged that they held title to bonds of the appellee of described issues in an amount aggregating $2,115,000.00, of which $14,000.00 is past due, and title to past due interest coupons on said bonds in an amount aggregating $335,787.50. Appellee's answer to the petition contained allegations to the following effect: The appellants are not the owners of the bonds or coupons sued upon, or any of them. They paid no valuable consideration therefor, but such bonds and coupons were delivered to, and are held by, appellants merely and solely for the purpose of collection, under the terms of a written agreement providing for a Bondholders' Committee, a copy of which agreement was made an exhibit to the answer. Numerous beneficial

owners of bonds and coupons sued on do not own a sufficient amount thereof to give the court jurisdiction of their claims. By written stipulation of the parties a jury was waived. Evidence taken in the trial showed the following: The appellants constituted the Bondholders' Committee provided for by the written agreement above referred to. All the bonds and coupons sued on and introduced in evidence were delivered to appellants by the respective holders thereof, and were held by the appellants under the terms of the above-mentioned agreement. That agreement provided for holders of such bonds and coupons becoming parties to such agreement by depositing bonds and coupons with a designated depositary; for every depositor by his deposit selling, assigning, transferring and delivering to the committee all his right, title, interest, property and claim, at law or in equity, by virtue of such bonds and coupons, to the end that the committee be vested with full legal title to all bonds and coupons deposited; for the committee having the power as owner and holder of deposited bonds and coupons to collect and receive all monies due and payable thereunder; to settle, compromise, or discontinue any action or proceeding for the collection of any of the bonds or coupons; to purchase, acquire, contract in regard to, deal in or sell or dispose of any property real or personal, which may be or become affected by liens, foreclosures or taxes; to pledge all or any part of such bonds as collateral security for the payment of such monies borrowed by the committee as it shall deem necessary or desirable; to charge the bonds and coupons for the compensation and expenses of the committee, its agents and depositaries; for any member of the committee becoming pecuniarily interested in any property or matters which are, or may become, subject to the agreement, or in any plan or agreement of refinancing or readjustment which the committee may approve; and for the committee having at any time the right to terminate the agreement. That agreement also provided for each depositor of bonds and/or coupons receiving a certificate of deposit signed by the depositary or agency receiving the same in such form as may be provided by the committee, and transferable only upon the books of the depositary issuing such certificate; that "the registered holder for the time being of any certificate shall be deemed for all purposes to be the absolute owner thereof and the bonds and/or

coupons therein referred to''; that after a plan adopted by the committee for refinancing, readjusting, liquidation or settlement of all or any part of the bonds shall have become operative, the committee shall return to each holder of a certificate of deposit dissenting from the plan the bonds and coupons represented by his certificate of deposit upon the surrender of the certificate and payment by him of an amount to be fixed by the committee; for such depositor, in the event of a termination of the agreement, being entitled to the delivery of bonds and coupons to the amount represented by the certificate of deposit upon surrendering the certificate properly indorsed to the depositary and paying the depositor's share of the indebtedness, obligations, liabilities and expenses of the committee; and that the agreement shall not remain in force beyond the period of five years unless extended by the committee with the consent of the holders of certificates of deposit representing a majority in amount of the deposited bonds and coupons.

An affidavit of one of the appellants, which was received in evidence, contained statements to the effect that appellants hold no bonds transferred by a citizen of Texas, and that two individuals, one a citizen of Maine, the other a citizen of Massachusetts, and an Ohio corporation, each transferred and delivered to the appellants bonds upon which were past due coupons exceeding in amount $3,000.00. A deposition of the same appellant, which was introduced in evidence by appellee, showed that in answer to an interrogatory calling for the names of the several persons, firms and corporations from whom appellants acquired bonds, and the amounts of bonds so acquired, stated: ''I have no knowledge of these facts.'' The court rendered judgment dismissing the suit for lack of jurisdiction, but without prejudice.

A statute provides that ''if in any suit commenced in a district court * * * it shall appear to the satisfaction of said district court, at any time after such suit has been brought, * * * that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable'' by the district court, that court ''shall proceed no further therein, but shall dismiss the

suit, * * * and shall make such order as to costs as shall be just." 28 U. S. C. A. § 80. It appears from the terms of the agreement under which the appellants acquired and held the bonds and coupons sued on that appellants were not the beneficial owners of those bonds and coupons, but held them for collection only. While language contained in the instrument evidencing that agreement, when considered alone, and without regard to other provisions contained therein, indicates that appellants acquired the legal and equitable title to the transferred bonds and coupons, other provisions of the instrument show that the appellants held the transferred bonds and coupons for the purpose of enforcing claims based thereon, or of compromising, adjusting or settling such claims, and that the transferors of such bonds and coupons remained the beneficial owners of whatever might be realized from such claims, less the part thereof used in paying the compensation of appellants and the amounts of the proper expenses of the appellants, their agents and depositaries. The fact that that instrument contains sundry provision for the appellants having powers which, without such provisions, would have been possessed by absolute beneficial owners of such bonds and coupons is indicative of the absence of an intention to give to the transfer of bonds and coupons to the appellants the effect of terminating the transferors' beneficial ownership of or interest therein. The correctness of a conclusion that a deposit of bonds or coupons under the agreement had the effect of putting an end to the depositor's beneficial ownership thereof is distinctly negatived by the provision that "the registered holder for the time being of any certificate shall be deemed for all purposes to be the absolute owner thereof and the bonds and/or coupons therein referred to."

The evidence showed that all the bonds and coupons were acquired by the appellants from the owners thereof under the above mentioned agreement. There was no evidence as to the amount of bonds or coupons owned by any of the depositors except that to the effect that each of three named depositors transferred and delivered to the appellants bonds upon which were past due coupons exceeding in amount $3,000.00. No evidence showed that any other depositor owned past due bonds or coupons exceeding in amount $3,000.00. The answer of the appellee having raised an issue as to any of the beneficial owners of bonds

and coupons sued on owning or holding an amount thereof sufficient to give the court jurisdiction, and there being no evidence tending to prove that any of such owners, except the three above referred to, owned past due bonds or coupons sufficient in amount to give the court jurisdiction of a suit thereon, the record fails to show that the past due bonds or coupons owned by any transferor, except the three above mentioned, were sufficient in amount to enable the real owner to sue thereon. In so far as the suit was for the enforcement of claims upon which the real owners could not have sued because of the insufficiency of the amount of their claim or claims, it did not really and substantially involve a dispute or controversy properly within the court's jurisdiction, and, so far as regards those claims—the inclusion of which in the suit evidences a purpose to get the court to take cognizance of a dispute or controversy not properly within its jurisdiction—the suit should have been dismissed. Bernards Township v. Stebbins, 109 U. S. 341; Lake County Commissioners v. Dudley, 173 U. S. 243; Waite v. Santa Cruz, 184 U. S. 302; Woodside v. Beckham, 216 U. S. 117; Hartford Fire Ins. Co. v. Erie R. Co., 172 Fed. 899. The decision in the case of Bernards Township v. Stebbins, supra, supports the conclusion that where, as in the instant case, the record shows that some of the sued on bonds or coupons payable to bearer could have been sued on by the real owners, but does not show that other such bonds or coupons sued on could have been sued on by their real owners, the above cited statute does not prevent the maintenance of the suit in so far as it is for the enforcement of claims suits on which by the real owners would have been within the court's jurisdiction. As to the last mentioned claims, based on instruments made by a corporation and payable to bearer, the suit was not kept from being one within the court's jurisdiction by the fact that appellants were vested with the legal title to those instruments simply for the purpose of collection. 28 U. S. C. A. § 41 (1); Waite v. Santa Cruz, supra, p. 325. The decision in the case of Lake County Commissioners v. Dudley, supra, is not opposed to the conclusion that, as to the last mentioned claims, the instant suit was within the court's jurisdiction, and should not have been dismissed for lack of jurisdiction. Language used in the opinion in the cited case is to be read in the light of the facts that it was

a suit on a Colorado corporation's interest coupons transferred or assigned to the plaintiff, and that it does not appear from the report of the case that the plaintiff therein procured from any one assignor who was a citizen of a State other than Colorado coupons in the amount required to give the court jurisdiction.

In the argument in behalf of the appellee it was suggested that the dismissal of the suit is sustainable by reason of the absence of evidence identifying and segregating from the approximately $350,000.00 bonds and coupons and on the past due coupons owned by the three transferors above mentioned. The judgment shows that the cause was "dismissed for lack of jurisdiction, and without prejudice." In the opinion rendered by the court reference was made to the evidence showing that each of several transferors owned bonds upon which were past due coupons exceeding in amount $3,000.00. In that connection the following was stated in the opinion: "Now it appears that these transferors, because of residence, could have maintained the suit. Even if the Court should hold that under this kind of an arrangement the persons named in the affidavit could maintain the suit, it is evident that all the balance of these claims must be dismissed. Under the state of the record, if they are to be dismissed all must be dismissed because the claims of these parties are not separated, not segregated in the evidence in any way; they cannot be identified. In view of the whole situation, it is my conclusion that this case in its entirety should be dismissed." We do not think that the statement that the claims referred to cannot be identified is warranted by the record. The agreement in pursuance of which the Bondholders' Committee was formed provided for each depositor of bonds and/or coupons receiving a certificate of deposit signed by the depositary or agency receiving the same, provisions on the subject indicating that such certificates, and registry records or book entries in reference thereto, contained descriptions of the bonds deposited. In the absence of evidence to the contrary, it seems reasonable to infer or suppose that the certificates issued upon the deposit of the bonds owned by the three mentioned depositors, as well as records or book entries in regard thereto, indicated the bonds deposited, that a production of those certificates, or records or book entries in regard thereto, could have been procured, and that by means thereof the

past due coupons owned by those depositors could have been identified. It seems that, before dismissing the suit in so far as it asserted claims based on those coupons, the court's discretion would have been properly exercised by affording a further opportunity to make clear proof of claims asserted by the suit and already shown to be within the court's jurisdiction. The court's failure in the circumstances disclosed to afford such further opportunity reasonably may be attributed to the mistaken conclusion that it would be futile to do so. The record showing that claims sued on were within the court's jurisdiction, and not showing that the identity of those claims could not be proved, we conclude that the court erred in dismissing the suit for lack of jurisdiction. Because of that error, the judgment is reversed, and the cause is remanded, with direction that a new trial be granted.

Reversed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 6511

CHARLES P. BULLARD et al.

versus

CITY OF CISCO, TEXAS

JUDGMENT—December 21, 1932

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was submitted to the Court upon the record and briefs on file;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said district Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with direction that a new trial be granted;

It is further ordered and adjudged that the appellee, City of Cisco, Texas, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 17, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 37,471. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 774. Charles P. Bullard et al., petitioners, vs. City of Cisco, Texas. Petition for a writ of certiorari and exhibit thereto. Filed March 14, 1933. File No. 37,471.